

Draft Chapter 3

QUALIFYING LOCAL STORMWATER MANAGEMENT PROGRAMS

3.0 INTRODUCTION

This chapter provides guidance related to the procedure to be authorized as a qualifying local stormwater management program or qualifying local program (QLP) and the key components that need to be addressed by a QLP. The components include but are not limited to administrative requirements, plan review, issuance of coverage under the Virginia Stormwater Management Program (VSMP) general permit for discharges of stormwater from construction activities, inspection, enforcement, and stormwater facility and maintenance, and reporting.

The QLP is a local stormwater program administered by a locality and has been authorized by the Virginia Soil and Water Conservation Board (board) to issue coverage under the VSMP general permit for discharges of stormwater from construction activities or construction general permit. Localities required by the Virginia Stormwater Act (Act) to adopt a QLP include localities located within Tidewater Virginia as defined by the Chesapeake Bay Preservation Act or localities partially or wholly designated to obtain coverage under a municipal separate storm sewer system (MS4) permit.

The above specified localities, based on a schedule set by the board, shall adopt a QLP no sooner than 15 months and not more than 21 months following the effective date of the regulations that establish local program criteria and delegation procedures. The board may allow an extension to a locality up to an additional 12 months provided the board's or its designee's review of the QLP warrants an extension and the locality has made substantive progress towards adoption.

Any locality not specified above may elect to adopt a QLP. These localities shall inform the board of their intention to be authorized as a QLP within six months following the effective date of the regulations that establish local program criteria and delegation procedures.

After the initial six months, a locality needs to notify the board at any regular board meeting of their intention to adopt a QLP. The notification to the board needs to include a proposed schedule for adoption of the QLP within a timeframe agreed upon by the board.

3.1 BOARD AUTHORIZATION OF A QLP

A locality required or a locality that informed the board of their intent to adopt a QLP needs to submit a complete application package for review by the board or its designee. The information contained in the application package must demonstrate that the locality will administer the QLP consistently with the requirements of the Act and VSMP permit regulations.

The application package at a minimum must contain a local program ordinance, funding and staffing plan based on projected permitting fees, and policies and procedures, for the administration, plan review, permit issuance, inspections, and enforcement. The application

package also needs to include any agreements with Soil and Water Conservation Districts, adjacent localities or other entities providing assistance to the locality to implement the QLP.

The board or its designee will have 20 calendar days to review the application package for completeness. If the application package is not complete, the locality will be notified in writing the reason the application package is consider incomplete. Once an application is determined to be complete the review period is 90 calendar days. The application will be reviewed for compliance with the Act and the VSMP permit regulations. During the review period, the locality will be notified by the board or its designee in writing, approving, disapproving, or time extension for reviewing the application. An explanation as to why an application was disapproved will be provided to the locality in the notification.

3.2 ADMINISTRATIVE COMPONENTS OF A QLP

The locality needs to adopt an ordinance, which is the legal foundation utilized to implement, demonstrate compliance, and enforce the requirements of an authorized QLP. A model ordinance is provided in Appendix 3-A. The ordinance must include the following elements:

- Identify the responsible party (e.g. position, department, etc.) that will be authorizing coverage under the construction general permit (CGP), reviewing plans, approving plans, performing inspections, and performing enforcement;
- Technical criteria that at a minimum complies with Part II Stormwater Management Program Technical Criteria (4VAC50-60-40 et seq.), QLP exceptions (4VAC50-60-122), and 4VAC50-60-460.L (Qualifying state, tribal, or local programs) of the VSMP permit regulations;
- Procedures for the submission and approval of stormwater management plans prior to the commencement of land-disturbance activities;
- Inspection and monitoring of construction sites covered by the CGP for compliance;
- Inspection and maintenance program that ensures stormwater management facilities are being maintained as designed;
- Enforcement policies and procedures that outline the enforcement steps to be taken under the Act, VSMP permit regulations, and the local ordinance; and
- Consent to follow procedures provided by DCR for the issuance, denial revocation, termination, reissuance, transfer, or modifications of coverage under the CGP.

The QLP may require a financial surety in accordance with § 10.1-603.8 of the Act to ensure that corrective actions could be taken by the QLP at the permittee's expense should the permittee, after proper notice and a specified time, does not take corrective actions to meet the conditions of the CGP. If the locality is going to require a financial surety it needs to be included in the

ordinance, as well as, providing a refund of the financial surety within 60 days of the completion of the requirements of the CGP.

3.3 PLAN REVIEW COMPONENTS OF A QLP

A QLP must require the submission of a complete stormwater management plan for review and approval prior to commencement of a land-disturbing activity. The QLP may allow an initial stormwater management plan to be submitted for review and approval. However, a complete stormwater management plan is still required to be submitted for review even if a QLP allows and approves an initial plan. The fee form and 50% of the of the required CGP fee are required to be submitted for complete or initial plans.

Initial stormwater management plans are limited to clearing and grading of the site unless the QLP allows for other construction activities in the plan. An initial plan may be submitted for review by the QLP with an erosion and sediment control, preliminary stormwater design for current and future construction activity and other information part of a complete plan required by the QLP.

The QLP needs to determine the completeness of a stormwater management plan and notify the applicant within 15 calendar days of receipt of the plan. If the plan is incomplete, the applicant shall be notified in writing by the QLP of the reason(s) the plan is incomplete. If the plan is complete and the applicant is notified of the determination within the 15 calendar days, the QLP has an additional 60 calendar days from the date of notification for the review of the plan. If a determination of completeness is not made by the QLP and the applicant is not notified, the stormwater management plan shall be considered complete as of the date of submission and the QLP will have a total of 60 calendar days from the date of submission to review the plan.

During the review period, the stormwater management plan shall be approved or disapproved by the QLP. Approval or denial shall be based on the plan's compliance with the requirements of for a plan. The applicant or their designated agent shall be notified in writing by the QLP of the decision. If the plan is not approved, the reason(s) for not approving the plan shall be provided in the notification. If a stormwater management plan meets all requirements when submitted and no action is taken by the QLP within the time specified above, the plan shall be deemed approved. The QLP shall act within 45 days on any plan that has been previously disapproved and resubmitted.

After a stormwater management plan has been approved by the QLP, the applicant or their designated agent may request to modify the plan. The QLP has 60 calendar days to respond in writing either approving or disapproving the request. The QLP may also require modifications to the approved plan to address deficiencies noted during an inspection.

A complete plan shall contain the following information:

- The location of all points of stormwater discharge, receiving surface waters or karst features into which the stormwater discharges, and pre-development and post-development conditions for drainage areas, including final drainage patterns and changes to existing contours;

- Contact Information including the name, address, and telephone number of the property owner and the tax reference number and parcel number of the property or properties affected;
- A narrative that includes a description of current site conditions and proposed development and final site conditions, including proposed stormwater management facilities and the mechanism, including an identification of financially responsible parties, through which the facilities will be operated and maintained during and after construction activity;
- The location and the design of the proposed stormwater management facilities
- Information identifying the hydrologic characteristics and structural properties of soils utilized with the installation of stormwater management facilities;
- Hydrologic and hydraulic computations of the pre-development and post-development runoff conditions for the required design storms;
- Good engineering practices and calculations verifying compliance with the water quality and quantity requirements of this chapter; and
- A map(s) of the site depicting the topography of the site.

The map(s) shall include the following items:

- All contributing drainage areas
- Receiving surface waters or karst features into which stormwater will be discharged
- Existing streams, ponds, culverts, ditches, wetlands, and other water bodies
- Soil types, geologic formations, forest cover, and other vegetative areas
- Current land use including existing structures, roads, and locations of known utilities and easements
- Sufficient information on adjoining parcels to assess the impacts of stormwater from the site
- The limits of clearing and grading, and the proposed drainage patterns on the site
- Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and
- Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.

3.4 AUTHORIZATION OF COVERAGE UNDER THE CGP BY THE QLP

Prior to the applicant being notified by the QLP of CGP coverage, the applicant must have an approved initial or complete stormwater management plan and submitted a proposed right-of-entry agreements or easements from the owner for purposes of inspection and maintenance and proposed maintenance agreements with an inspection schedules. In addition, the applicant must have an approved registration statement for the CGP and submitted the required fee form and fee.

The QLP must notify the applicant if the submitted registration statement is incomplete within 15 working days of receipt by the QLP of the registration statement. The notice must include what information is required to be submitted to complete the registration statement and that the land-disturbing activity does not have coverage under the CGP. Coverage or termination of coverage shall be authorized through a standardized database or other method provided by the DCR. Such database shall include, at a minimum, permit number, operator name, activity name, acres disturbed, date of permit coverage, and site address and location as well as date of termination.

3.5 INSPECTION BY THE QLP

The QLP or its designee is responsible for inspecting the land-disturbing activity during construction for compliance with the CGP. Since a locality is responsible for erosion and sediment control (ESC) inspections, if they have an ESC program, inspections for compliance with the CGP may be conducted in conjunction with the localities ESC inspection.

The QLP must establish an inspection program that will ensure stormwater management facilities are being maintained as designed. The inspection program developed by the QLP must be submitted to the board for review and approval prior to implementation. The inspection program must be enforceable and meet the intent of the VSMP permit regulations. The inspection program must also require the owner(s) of stormwater management facilities to conduct inspections in accordance with an inspection schedule in a recorded maintenance agreement, and submit written inspection and maintenance reports to the QLP upon request.

The QLP's inspection program needs to be based on a system of priorities that takes into consideration the purpose and type of the facility, ownership and the existence of a recorded maintenance agreement and inspection schedule, the contributing drainage area, and downstream conditions. In addition, each stormwater management facility must be inspected by the QLP or its designee at least every five years. An inspection report shall be generated and kept on file with the QLP for all stormwater management facilities inspected by the qualifying local program or its designee.

A QLP may utilize the stormwater management facility owner's inspection report provided the inspection was conducted by a person who is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (§54.1-400 et seq.) of Chapter 4 of Title 54.1 or who holds a certificate of competence from the board. In addition, the owner's inspection and report must be consistent with the board approved inspection program and kept on file with the QLP.

3.6 ENFORCEMENT BY THE QLP

A QLP must develop policies and procedures that outline the steps to be taken regarding enforcement actions under the Act, VSMP permit regulations, and the local ordinance. A qualifying local program may utilize the DCR's Stormwater Management Enforcement Manual as guidance in establishing policies and procedures.

The enforcement program developed by the QLP may include informal and formal administrative procedures such as inspection reports, notices to comply, notice of corrective actions, consent orders, and emergency special orders. In addition, the enforcement program may include procedures for civil penalties, criminal penalties, and injunctions.

3.7 STORMWATER MANAGEMENT FACILITY MAINTENANCE AND THE QLP

The QLP must require the person responsible for the land-disturbing activity or their designated agent to submit construction record drawing for permanent stormwater management facilities. The drawings shall be appropriately sealed and signed by a professional in accordance with all minimum standards and requirements pertaining to the practice certifying that the stormwater management facilities have been constructed in accordance with the plan approved by the QLP. The QLP shall have the construction record drawing and certification on file prior to the release of the portion of the performance bond or surety associated with the stormwater management facility.

The operation and maintenance of stormwater management facilities shall remain with the property owner or other legally established entity and pass to any successor, unless assumed by the QLP. The QLP must be notified of any transfer or conveyance of ownership or responsibility for maintenance of a stormwater management facility. The QLP also needs to require right-of-entry agreements or easements from the property owner for purposes of inspection and maintenance. The QLP needs to require a maintenance agreement from the property owner and be a party to each maintenance agreement.

The maintenance agreement shall include a schedule for inspections by the owner to ensuring each facility is maintained as designed and the designed flow and drainage patterns from the site to a permanent facility are maintained. The agreements may also contain provisions specifying where maintenance or repair of a stormwater management facility located on the owner's property is neglected, or the stormwater management facility becomes a public health or safety concern and the owner has failed to perform the necessary maintenance and repairs after receiving notice from the locality, the QLP may perform the necessary maintenance and repairs and recover the costs from the owner. In the specific case of a public health or safety danger, the agreement may provide that the written notice may be waived by the locality.

3.8 REPORTING AND RECORDKEEPING BY THE QLP

The QLP is required to provide the following information to DCR on a fiscal year basis (July 1 to June 30) by October 1st of each year in a format provided by the DCR:

- Information on each permanent stormwater management facility completed during the fiscal year to include type of stormwater management facility, coordinates, acres treated, and the surface waters or karst features into which the stormwater management facility will discharge;
- Number of projects covered by a CGP inspected and the total number of inspections by acreage categories determined by the DCR during the fiscal year;
- Number and type of enforcement actions during the fiscal year; and
- Number of exceptions applied for and the number granted or denied during the fiscal year.

The QLP must maintain CGP files for 3 years following permit termination. After 3 years the CGP files are to be delivered to DCR by October 1st of each year. The QLP needs to maintain on file stormwater maintenance facility inspection reports for 5 years from the date of inspection. Stormwater maintenance agreements, design standards and specifications, post-construction surveys, and maintenance records shall be maintained in perpetuity with the QLP.

Draft Appendix 3-A

Local Stormwater Management Program Model Ordinance

Note: This document is provided as guidance to localities to assist in meeting the requirements of the Virginia Stormwater Management Act and the Virginia Stormwater Management Program (VSMP) Permit Regulations during the development and revision of a local Stormwater Management program. We recommend that localities review this model ordinance to ensure that the ordinance is appropriate and consistent with local government programs and policies. Prior to adding or deleting any item, we recommend contacting the local DCR Stormwater Programs representative for assistance.

Section 10-1. TITLE, PURPOSE, AND AUTHORITY

This ordinance shall be known as the "Stormwater Management Ordinance of **[local program]**."

The purpose of this chapter is to ensure the general health, safety, and welfare of the citizens of **[local program]** as well as protecting the quality and quantity of state waters from the potential harm of unmanaged stormwater. In addition to establish standards for stormwater management from land-disturbing activities, and to protect properties, the quality and quantity of state waters, the physical integrity of stream channels, and other natural resources of **[local program]** and to establish procedures whereby these requirements shall be administered and enforced.

The "Stormwater Management Ordinance of **[local program]**" may be administered in conjunction with a local MS4 program and a local erosion and sediment control program, which shall include, but is not limited to, the following: (1) consistency with the VSMP Permit Regulations as amended; (2) provisions for long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff; and (3) provisions for the integration of locally adopted stormwater management programs with local erosion and sediment control, flood insurance, flood plain management, and other programs requiring compliance prior to authorizing construction in order to make the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs.

This Chapter is authorized by the Code of Virginia, Title 10.1, Chapter 6, Article 1.1 (Sec. 10.1-603.1 et seq.), known as the Virginia Stormwater Management Act. Pursuant to Sec 10.1-603.3 of the Virginia Stormwater Act, the **[local program]**, after approval of the Virginia Soil and Water Conservation Board, may enter into agreements with soil and water conservation districts, adjacent localities, or other entities to carry out the responsibilities of the Act and this stormwater management program shall be considered to meet the stormwater management requirements under the Chesapeake Bay Preservation Act (Sec. 10.1-2100 et seq.) and attendant regulations.

Section 10-2. DEFINITIONS. (4VAC50-60-10)

The following words and terms used in this chapter have the following meanings unless the context clearly indicates otherwise.

"Act" means the Virginia Stormwater Management Act, Article 1.1 (§10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia.

"Adequate channel" means a watercourse or wetland that will convey the designated frequency storm event without overtopping its banks or causing erosive damage to the bed, banks, or overbank sections of the same.

"Administrator" means the Administrator of the United States Environmental Protection Agency or an authorized representative.

"Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a discharge or a related activity is subject under the Clean Water Act (CWA) (33 USC §1251 et seq.) and the Act, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, and standards for sewage sludge use or disposal under §§301, 302, 303, 304, 306, 307, 308, 403 and 405 of CWA.

"Approval authority" means the Virginia Soil and Water Conservation Board or their designee.

"Approved program" or "approved state" means a state or interstate program that has been approved or authorized by EPA under 40 CFR Part 123 (2000).

"Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

"Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

"Best management practice" or "BMP" means schedules of activities, prohibitions of practices, including both a structural or nonstructural practice, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Board" means the Virginia Soil and Water Conservation Board.

"Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

"Channel" means a natural stream or manmade watercourse with defined bed and banks that conducts continuously or periodically flowing water.

"Comprehensive stormwater management plan" means a plan, which may be integrated with other land use plans or regulations, that specifies how the water quality and quantity components of stormwater are to be managed on the basis of an entire watershed or a portion thereof. The plan may also provide for the remediation of erosion, flooding, and water quality and quantity problems caused by prior development.

"Construction activity" means any clearing, grading or excavation associated with large construction activity or associated with small construction activity.

"Contiguous zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (37 FR 11906).

"Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

"Control measure" means any best management practice or other method used to prevent or reduce the discharge of pollutants to surface waters.

"Co-operator" means an operator of a VSMP permit that is only responsible for permit conditions relating to the discharge for which it is the operator.

"CWA" means the federal Clean Water Act (33 USC §1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

"CWA and regulations" means the Clean Water Act (CWA) and applicable regulations promulgated thereunder. For the purposes of this chapter, it includes state program requirements.

"Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

"Department" means the Department of Conservation and Recreation.

"Development" means land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures.

"Direct discharge" means the discharge of a pollutant.

"Director" means the Director of the Department of Conservation and Recreation or his designee.

"Discharge," when used without qualification, means the discharge of a pollutant.

"Discharge of a pollutant" means:

1. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into surface waters from: surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person that do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

"Discharge Monitoring Report" or "DMR" means the form supplied by the department, or an equivalent form developed by the operator and approved by the board, for the reporting of self-monitoring results by operators.

"Draft permit" means a document indicating the board's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination is not a draft permit. A proposed permit is not a draft permit.

"Drainage area" means a land and water area on a land-disturbing site from which runoff flows to a common outlet point.

"Effluent limitation" means any restriction imposed by the board on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into surface waters, the waters of the contiguous zone, or the ocean.

"Effluent limitations guidelines" means a regulation published by the administrator under §304(b) of the CWA to adopt or revise effluent limitations.

"Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

"Existing permit" means for the purposes of this chapter a permit issued by the permit-issuing authority and currently held by a permit applicant.

"Existing source" means any source that is not a new source or a new discharger.

"Facilities or equipment" means buildings, structures, process or production equipment or machinery that form a permanent part of a new source and that will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the new source or water pollution treatment for the new source.

"Facility or activity" means any VSMP point source or treatment works treating domestic sewage or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the VSMP.

"Flood fringe" is the portion of the floodplain outside the floodway, usually associated with standing rather than flowing water, which is covered by floodwater during the 100-year discharge.

"Flooding" means a volume of water that is too great to be confined within the banks or walls of the stream, water body or conveyance system and that overflows onto adjacent lands, thereby causing or threatening damage.

"Floodplain" means any land area adjoining a channel, river, stream, or other water body that is susceptible to being inundated by water. It includes the floodway and flood fringe areas.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas, usually associated with flowing water, that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot or as otherwise designated by the Federal Emergency Management Agency.

"General permit" means a VSMP permit authorizing a category of discharges under the CWA and the Act within a geographical area.

"Hazardous substance" means any substance designated under the Code of Virginia and 40 CFR Part 116 (2000) pursuant to §311 of the CWA.

"Hydrologic Unit Code" or "HUC" means a watershed unit established in the most recent version of Virginia's 6th Order National Watershed Boundary Dataset.

"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of stormwater, except discharges pursuant to a VPDES or VSMP permit (other than the VSMP permit for discharges from the municipal separate storm sewer), discharges resulting from fire fighting activities, and discharges identified by and in compliance with 4VAC50-60-1220 C 2.

"Impervious cover" means a surface composed of any material that significantly impedes or prevents natural infiltration of water into soil. Impervious surfaces include, but are not limited to, conventional roofs, buildings, streets, parking areas, and any conventional concrete, asphalt, or gravel surface that is or may become compacted.

"Incorporated place" means a city, town, township, or village that is incorporated under the Code of Virginia.

"Indian country" means (i) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (ii) all dependent Indian communities with the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and (iii) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

"Indirect discharger" means a nondomestic discharger introducing "pollutants" to a "publicly owned treatment works (POTW)."

"Inspection" means an on-site review of the project's compliance with the permit, the local stormwater management program, and any applicable design criteria, or an on-site review to obtain information or conduct surveys or investigations necessary in the enforcement of the Act and this chapter.

"Interstate agency" means an agency of two or more states established by or under an agreement or compact approved by Congress, or any other agency of two or more states having substantial powers or duties pertaining to the control of pollution as determined and approved by the administrator under the CWA and regulations.

"Karst features" means sinkholes, sinking and losing streams, caves, large flow springs, and other such landscape features found in karst areas.

"Land disturbance" or "land-disturbing activity" means a manmade change to the land surface that potentially changes its runoff characteristics including any clearing, grading, or excavation associated with a construction activity regulated pursuant to the CWA, the Act, and this chapter.

"Large construction activity" means construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Large construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.

"Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 250,000 or more as determined by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix F (2000));
2. Located in the counties listed in 40 CFR Part 122 Appendix H (2000), except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;
3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the board as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the board may consider the following factors:
 - a. Physical interconnections between the municipal separate storm sewers;
 - b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;

- c. The quantity and nature of pollutants discharged to surface waters;
 - d. The nature of the receiving surface waters; and
 - e. Other relevant factors.
4. The board may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in this definition.

"Linear development project" means a land-disturbing activity that is linear in nature such as, but not limited to, (i) the construction of electric and telephone utility lines, and natural gas pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other related structures of a railroad company; and (iii) highway construction projects.

"Local stormwater management program" or "local program" means the various methods employed by a locality or the department to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, permit requirements, policies and guidelines, technical materials, plan review, inspection, enforcement, and evaluation consistent with the Act and this chapter.

"Locality" means a county, city, or town.

"Major facility" means any VSMP facility or activity classified as such by the regional administrator in conjunction with the board.

"Major modification" means, for the purposes of this chapter, the modification or amendment of an existing permit before its expiration that is not a minor modification as defined in this regulation.

"Major municipal separate storm sewer outfall" or "major outfall" means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive stormwater from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), with an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of two acres or more).

"Manmade" means constructed by man.

"Manmade stormwater conveyance system" means a pipe, ditch, vegetated swale, or other conveyance constructed by man.

"Maximum daily discharge limitation" means the highest allowable daily discharge.

"Maximum extent practicable" or "MEP" means the technology-based discharge standard for municipal separate storm sewer systems established by CWA §402(p). MEP is achieved, in part, by selecting and implementing effective structural and nonstructural best management practices (BMPs) and rejecting ineffective BMPs and replacing them with effective best management practices (BMPs). MEP is an iterative standard, which evolves over time as urban runoff management knowledge increases. As such, the operator's MS4 program must continually be assessed and modified to incorporate improved programs, control measures, BMPs, etc., to attain compliance with water quality standards.

"Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 100,000 or more but less than 250,000 as determined by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix G (2000));
2. Located in the counties listed in 40 CFR Part 122 Appendix I (2000), except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;
3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the board as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the board may consider the following factors:
 - a. Physical interconnections between the municipal separate storm sewers;
 - b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;
 - c. The quantity and nature of pollutants discharged to surface waters;
 - d. The nature of the receiving surface waters; or
 - e. Other relevant factors.
4. The board may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in subdivisions 1, 2 and 3 of this definition.

"Minor modification" means, for the purposes of this chapter, minor modification or amendment of an existing permit before its expiration as specified in 4VAC50-60-640. Minor modification for the purposes of this chapter also means other modifications and amendments not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor permit modification or amendment does not substantially alter permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

"Municipal separate storm sewer" means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains:

1. Owned or operated by a federal, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management agency under §208 of the CWA that discharges to surface waters;
2. Designed or used for collecting or conveying stormwater;
3. That is not a combined sewer; and
4. That is not part of a publicly owned treatment works.

"Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems or designated under 4VAC50-60-380A 1.

"Municipal Separate Storm Sewer System Management Program" or "MS4 Program" means a management program covering the duration of a permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA and regulations and the Act and attendant regulations, using management practices, control techniques, and system, design and engineering methods, and such other provisions that are appropriate.

"Municipality" means a city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under §208 of the CWA.

"National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under §§307, 402, 318, and 405 of the CWA. The term includes an approved program.

"Natural channel design concepts" means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its floodplain.

"Natural stormwater conveyance system" means the main channel of a natural stream, in combination with the floodway and flood fringe, which compose the floodplain.

"Natural stream" means a tidal or nontidal watercourse that is part of the natural topography. It usually maintains a continuous or seasonal flow during the year and is characterized as being irregular in cross-section with a meandering course. Constructed channels such as drainage ditches or swales shall not be considered natural streams.

"New discharger" means any building, structure, facility, or installation:

1. From which there is or may be a discharge of pollutants;
2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;
3. Which is not a new source; and
4. Which has never received a finally effective VPDES or VSMP permit for discharges at that site.

This definition includes an indirect discharger that commences discharging into surface waters after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979.

"New permit" means, for the purposes of this chapter, a permit issued by the permit-issuing authority to a permit applicant that does not currently hold and has never held a permit of that type, for that activity, at that location.

"New source," means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

1. After promulgation of standards of performance under §306 of the CWA that are applicable to such source; or
2. After proposal of standards of performance in accordance with §306 of the CWA that are applicable to such source, but only if the standards are promulgated in accordance with §306 of the CWA within 120 days of their proposal.

"Nonpoint source pollution" means pollution such as sediment, nitrogen and phosphorous, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater runoff.

"Operator" means the owner or operator of any facility or activity subject to regulation under the VSMP program. In the context of stormwater associated with a large or small construction activity, operator means any person associated with a construction project that meets either of the following two criteria: (i) the person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (ii) the person has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other permit conditions (i.e., they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions). In the context of stormwater discharges from Municipal Separate Storm Sewer Systems (MS4s), operator means the operator of the regulated MS4 system.

"Outfall" means, when used in reference to municipal separate storm sewers, a point source at the point where a municipal separate storm sewer discharges to surface waters and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other surface waters and are used to convey surface waters.

"Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

"Owner" means the Commonwealth or any of its political subdivisions including, but not limited to, sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes or pollutants to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of §62.1-44.5 of the Code of Virginia, the Act and this chapter.

"Peak flow rate" means the maximum instantaneous flow from a prescribed design storm at a particular location.

"Percent impervious" means the impervious area within the site divided by the area of the site multiplied by 100.

"Permit" means an approval issued by the permit-issuing authority for the initiation of a land-disturbing activity or for stormwater discharges from an MS4. Permit does not include any permit that has not yet been the subject of final permit-issuing authority action, such as a draft permit or a proposed permit.

"Permit-issuing authority" means the board, the department, or a locality with a qualifying local program.

"Permittee" means the person or locality to which the permit is issued, including any operator whose construction site is covered under a construction general permit.

"Person" means any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body (including but not limited to a federal, state, or local entity), any interstate body or any other legal entity.

"Planning area" means a designated portion of the parcel on which the land development project is located. Planning areas shall be established by delineation on a master plan. Once established, planning areas shall be applied consistently for all future projects.

"Point of discharge" means a location at which stormwater runoff is released.

"Point source" means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC §2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

1. Sewage from vessels; or
2. Water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well if the well used either to facilitate production or for disposal purposes is approved by the board and if the board determines that the injection or disposal will not result in the degradation of ground or surface water resources.

"Pollutant discharge" means the average amount of a particular pollutant measured in pounds per year or other standard reportable unit as appropriate, delivered in a diffuse manner by stormwater runoff.

"Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the State Water Control Board, are "pollution" for the terms and purposes of this chapter.

"Post-development" refers to conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site or tract of land.

"Pre-development" refers to the conditions that exist at the time that plans for the land development of a tract of land are submitted to the plan approval authority. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time prior to the first item being submitted shall establish pre-development conditions.

"Prior developed lands" means land that has been previously utilized for residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures, and that will have the impervious areas associated with those uses altered during a land disturbing activity.

"Privately owned treatment works" or "PVOTW" means any device or system that is (i) used to treat wastes from any facility whose operator is not the operator of the treatment works and (ii) not a POTW.

"Proposed permit" means a VSMP permit prepared after the close of the public comment period (and, when applicable, any public hearing and administrative appeals) that is sent to EPA for review before final issuance. A proposed permit is not a draft permit.

"Publicly owned treatment works" or "POTW" means a treatment works as defined by §212 of the CWA that is owned by a state or municipality (as defined by §502(4) of the CWA). This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in §502(4) of the CWA, that has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

"Qualifying local stormwater management program" or "qualifying local program" means a local program that is administered by a locality that has been authorized by the board to issue coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities (4VAC50-60-1170).

"Recommencing discharger" means a source that recommences discharge after terminating operations.

"Regional administrator" means the Regional Administrator of Region III of the Environmental Protection Agency or the authorized representative of the regional administrator.

"Restored stormwater conveyance system" means a stormwater conveyance system that has been designed and constructed using natural channel design concepts, including the main channel, floodway, and flood fringe.

"Revoked permit" means, for the purposes of this chapter, an existing permit that is terminated by the board before its expiration.

"Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.

"Runoff" or "stormwater runoff" means that portion of precipitation that is discharged across the land surface or through conveyances to one or more waterways.

"Runoff characteristics" include, but are not limited to velocity, peak flow rate, volume, time of concentration, and flow duration, and their influence on channel morphology including sinuosity, channel cross-sectional area, and channel slope.

"Runoff volume" means the volume of water that runs off the site of a land-disturbing activity from a prescribed design storm.

"Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the Act, the CWA and regulations.

"Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

"Severe property damage" means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

"Significant materials" means, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under §101(14) of CERCLA (42 USC §9601(14)); any chemical the facility is required to report pursuant to §313 of Title III of SARA (42 USC §11023); fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with stormwater discharges.

"Single jurisdiction" means, for the purposes of this chapter, a single county or city. The term county includes incorporated towns which are part of the county.

"Site" means the land or water area where any facility or activity is physically located or conducted, a parcel of land being developed, or a designated area of a parcel in which the land development project is located. Areas channelward of mean low water in tidal Virginia shall not be considered part of a site.

"Site hydrology" means the movement of water on, across, through and off the site as determined by parameters including, but not limited to, soil types, soil permeability, vegetative cover, seasonal water tables, slopes, land cover, and impervious cover.

"Small construction activity" means:

1. Construction activities including clearing, grading, and excavating that results in land disturbance of equal to or greater than one acre, or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act, and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The board may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five acres where stormwater controls are not needed based on a "total maximum daily load" (TMDL) approved or established by EPA that addresses the pollutant(s) of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this subdivision, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the board that the construction activity will take place, and stormwater discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

2. Any other construction activity designated by the either the board or the EPA regional administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to surface waters.

"Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are (i) owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including

special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under §208 of the CWA that discharges to surface waters and (ii) not defined as "large" or "medium" municipal separate storm sewer systems or designated under 4VAC50-60-380 A 1. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highway and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

"Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

"Stable" means, in the context of channels, a channel that has developed an established dimension, pattern, and profile such that over time, these features are maintained.

"State" means the Commonwealth of Virginia.

"State/EPA agreement" means an agreement between the regional administrator and the state that coordinates EPA and state activities, responsibilities and programs including those under the CWA and the Act.

"State project" means any land development project that is undertaken by any state agency, board, commission, authority or any branch of state government, including state-supported institutions of higher learning.

"State Water Control Law" means Chapter 3.1 (§62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

"Stormwater conveyance system" means any of the following, either within or downstream of the land disturbing activity: (i) a manmade stormwater conveyance system; (ii) a natural stormwater conveyance system; or (iii) a restored stormwater conveyance system.

"Stormwater discharge associated with construction activity" means a discharge of pollutants in stormwater runoff from areas where land-disturbing activities (e.g., clearing, grading, or excavation); construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck washout, fueling); or other industrial stormwater directly related to the construction process (e.g., concrete or asphalt batch plants) are located.

"Stormwater discharge associated with large construction activity" means the discharge of stormwater from large construction activities.

"Stormwater discharge associated with small construction activity" means the discharge of stormwater from small construction activities.

"Stormwater management facility" means a device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

"Stormwater management plan" means a document(s) containing material for describing how existing runoff characteristics will be maintained by a land-disturbing activity and methods for complying with the requirements of the local program or this chapter.

"Stormwater Management Program" means a program established by a locality that is consistent with the requirements of the Act, this chapter and associated guidance documents.

"Stormwater management standards" means the minimum criteria for stormwater management programs and land-disturbing activities as set out in Part II of these regulations.

"Stormwater Pollution Prevention Plan" (SWPPP) or "plan" means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollution that may reasonably be expected to affect the quality of stormwater discharges from the construction site or its associated land-disturbing activities. In addition the document shall describe and ensure the implementation of best management practices, and shall include, but not be limited to the inclusion of, or the incorporation by reference of, an erosion and sediment control plan, a post-construction stormwater management plan, a spill prevention control and countermeasure (SPCC) plan, and other practices that will be used to reduce pollutants in stormwater discharges from land-disturbing activities and to assure compliance with the terms and conditions of this chapter. All plans incorporated by reference into the SWPPP shall be enforceable under the permit issued.

"Subdivision" means the same as defined in §15.2-2201 of the Code of Virginia.

"Surface waters" means:

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - a. That are or could be used by interstate or foreign travelers for recreational or other purposes;
 - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - c. That are used or could be used for industrial purposes by industries in interstate commerce.
4. All impoundments of waters otherwise defined as surface waters under this definition;
5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
6. The territorial sea; and
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA and the law, are not surface waters. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the Clean Water Act, the final authority regarding the Clean Water Act jurisdiction remains with the EPA.

"Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136 (2000).

"Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations for point sources, load allocations (LAs) for nonpoint sources, natural background loading and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

"Toxic pollutant" means any pollutant listed as toxic under §307(a)(1) of the CWA or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing §405(d) of the CWA.

"Unstable" means, in the context of channels, a channel that is not stable.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the operator. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Variance" means any mechanism or provision under §301 or §316 of the CWA or under 40 CFR Part 125 (2000), or in the applicable effluent limitations guidelines that allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the CWA. This includes provisions that allow the establishment of alternative limitations based on fundamentally different factors or on §301(c), §301(g), §301(h), §301(i), or §316(a) of the CWA.

"Virginia Pollutant Discharge Elimination System (VPDES) permit" or "VPDES permit" means a document issued by the State Water Control Board pursuant to the State Water Control Law authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters and the use or disposal of sewage sludge.

"Virginia Stormwater Management Act" or "Act" means Article 1.1 (§10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia.

"Virginia Stormwater Management Handbook" means a collection of pertinent information that provides general guidance for compliance with the Act and associated regulations and is developed by the department with advice from a stakeholder advisory committee.

"Virginia Stormwater Management Program" or "VSMP" means the Virginia program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing requirements pursuant to the CWA, the Act, this chapter, and associated guidance documents.

"Virginia Stormwater Management Program permit" or "VSMP permit" means a document issued by the permit-issuing authority pursuant to the Virginia Stormwater Management Act and this chapter authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters. Under the approved state program, a VSMP permit is equivalent to a NPDES permit.

"VSMP application" or "application" means the standard form or forms, including any additions, revisions or modifications to the forms, approved by the administrator and the board for applying for a VSMP permit.

"Wasteload allocation" or "wasteload" or "WLA" means the portion of a receiving surface water's loading or assimilative capacity allocated to one of its existing or future point sources of pollution. WLAs are a type of water quality-based effluent limitation.

"Water quality standards" or "WQS" means provisions of state or federal law that consist of a designated use or uses for the waters of the Commonwealth and water quality criteria for such waters based on such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water, and serve the purposes of the State Water Control Law (§62.1-44.2 et seq. of the Code of Virginia), the Act (§10.1-603.1 et seq. of the Code of Virginia), and the CWA (33 USC §1251 et seq.).

"Watershed" means a defined land area drained by a river or stream, karst system, or system of connecting rivers or streams such that all surface water within the area flows through a single outlet. In karst areas, the karst feature to which the water drains may be considered the single outlet for the watershed.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

"Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

Section 10-3. LOCAL STORMWATER MANAGEMENT PROGRAM

- A.** Pursuant to §10.1-603.2 et seq. of the Code of Virginia, the **[local program]** hereby adopts the regulations, references, guidelines, standards and specifications promulgated by the Board for stormwater management from land-disturbing activities, and to protect properties, the quality and quantity of state waters, the physical integrity of stream channels, and other natural resources. Said regulations, references, guidelines, standards and specifications for stormwater management are included in but not limited to the Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60), as amended, and the Virginia Stormwater Management Handbook, as amended, Technical Bulletins, as amended, and the Virginia Stormwater BMP Clearing House, as amended.
- B.** Before adopting or revising regulations, the **[local program]** shall give due notice and conduct a public hearing on the proposed or revised regulations, except that a public hearing shall not be required when the **[local program]** is amending its program to conform to revisions in the state program. However, a public hearing shall be held if the **[local program]** proposes or revises regulations that are more stringent than the state program.

Note: DCR recommends that a public hearing be held when the ordinance is amended or revised.

C. Regulated activities. (§ 10.1-603.8.A.)

A person shall not develop any land for residential, commercial, industrial, or institutional use until he has submitted a permit application to the permit issuing authority and has obtained a permit.

D. Submission and approval of a permit application. (§ 10.1-603.8.A.)

The permit issuing authority shall act on any permit application within 60 days after it has been determined by the permit issuing authority to be a complete application. The permit issuing authority may either issue the permit or deny the permit and shall provide written rationale for the denial. The permit issuing authority shall act on any permit application that has been previously disapproved within 45 days after the application has been revised, resubmitted for approval, and deemed complete.

E. Security for performance. (§ 10.1-603.8.A.)

Prior to issuance of any permit, the permit issuing authority may also require an applicant, excluding those regulated under § [10.1-603.5](#), to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or

such other legal arrangement acceptable to the permit issuing authority, to ensure that measures could be taken by the permit issuing authority at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate actions which may be required of him by the permit conditions as a result of his land disturbing activity. If the permit issuing authority takes such action upon such failure by the applicant, the permit issuing authority may collect from the applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within 60 days of the completion of the requirements of the permit conditions, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated. These requirements are in addition to all other provisions of law relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

F. Exemptions. (§ 10.1-603.8.B.)

Notwithstanding any other provisions of this article, the following activities are exempt:

1. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1;
2. Clearing of lands specifically for agricultural purposes and the management, tilling, planting or harvesting of agricultural, horticultural, or forest crops;
3. Single-family residences separately built and disturbing less than one acre and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures. However, localities subject to the Chesapeake Bay Preservation Act (§ [10.1-2100](#) et seq.) may regulate these single family residences where land disturbance exceeds 2,500 square feet;
4. Land disturbing activities that disturb less than one acre of land area except for land disturbing activity exceeding an area of 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20 et seq.) adopted pursuant to the Chesapeake Bay Preservation Act (§ [10.1-2100](#) et seq.) or activities that are part of a larger common plan of development or sale that is one acre or greater of disturbance; however, the governing body of a locality which has adopted a stormwater management program may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;
5. Linear development projects, provided that (i) less than one acre of land will be disturbed per outfall or watershed, (ii) there will be insignificant increases in peak flow rates, and (iii) there are no existing or anticipated flooding or erosion problems downstream of the discharge point;
6. Discharges to a sanitary sewer or a combined sewer system;

7. Activities under a State or federal reclamation program to return an abandoned property to an agricultural or open land use; and
8. Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project and that disturbs less than five acres of land.

G. Utilities. (§ 10.1-603.8.C.)

Electric, natural gas, and communication utility companies, interstate and intrastate natural gas pipeline companies, and railroad companies may not undertake any land clearing, soil movement, or construction activity involving soil movement or land disturbance one acre or greater unless the company has submitted a permit application for the land-disturbing activity and the application has been reviewed and approved and a stormwater permit issued by the Board. Companies may submit a single permit application containing stormwater management standards and specifications for all land disturbing activities conducted under the requirements of this article.

H. Stormwater nonpoint nutrient offsets. (§ 10.1-603.8:1)

A. As used in this section:

"Nonpoint nutrient offset" means nutrient reductions certified as nonpoint nutrient offsets under the Chesapeake Bay Watershed Nutrient Exchange Program (§ [62.1-44.19:12](#) et seq.).

"Permit issuing authority" has the same meaning as in § [10.1-603.2](#) and includes any locality that has adopted a local stormwater management program.

"Tributary" has the same meaning as in § [62.1-44.19:13](#).

B. A permit issuing authority may allow compliance with stormwater nonpoint nutrient runoff water quality criteria established pursuant to § [10.1-603.4](#), in whole or in part, through the use of the permittee's acquisition of nonpoint nutrient offsets in the same tributary.

C. No permit issuing authority shall allow the use of nonpoint nutrient offsets to address water quantity control requirements. No permit issuing authority shall allow the use of nonpoint nutrient offsets in contravention of local water quality-based limitations: (i) consistent with determinations made pursuant to subsection B of § [62.1-44.19:7](#), (ii) contained in a municipal separate storm sewer system (MS4) program plan approved by the Department, or (iii) as otherwise may be established or approved by the Board.

D. A permit issuing authority may only allow the use of nonpoint nutrient offsets when the permit applicant demonstrates to the satisfaction of the permit issuing authority that (i) alternative site designs have been considered that may accommodate on-site best management practices, (ii) on-site best management practices have been considered in alternative site designs to the maximum extent practicable, (iii) appropriate on-site best management practices will be implemented, and (iv) full compliance with

postdevelopment nonpoint nutrient runoff compliance requirements cannot practicably be met on site.

E. Documentation of the permittee's acquisition of nonpoint nutrient offsets shall be provided to the permit issuing authority in a certification from an offset broker documenting the number of phosphorus nonpoint nutrient offsets acquired and the associated ratio of nitrogen nonpoint nutrient offsets at the offset generating facility. The offset broker shall pay the permit issuing authority a water quality enhancement fee equal to six percent of the amount paid by the permittee for the nonpoint nutrient offsets. If a locality is not the permit issuing authority, such fee shall be deposited into the Virginia Stormwater Management Fund established by § [10.1-603.4:1](#). If the permit issuing authority is a locality, such fees shall be used solely in the locality where the associated stormwater permit applies for inspection and maintenance of stormwater best management practices, stormwater educational programs, or programs designed to protect or improve local water quality.

F. Nonpoint nutrient offsets used pursuant to subsection B shall be generated in the same or adjacent eight digit hydrologic unit code as defined by the United States Geological Survey as the permitted site. Nonpoint nutrient offsets outside the same or adjacent eight digit hydrologic unit code may only be used if it is determined by the permit issuing authority that no nonpoint nutrient offsets are available within the same or adjacent eight digit hydrologic unit code when the permit issuing authority accepts the final site design. In such cases, and subject to other limitations imposed in this section, nonpoint nutrient offsets generated within the same tributary may be used. In no case shall nonpoint nutrient offsets from another tributary be used.

G. For that portion of a site's compliance with stormwater nonpoint nutrient runoff water quality criteria being obtained through nonpoint nutrient offsets, a permit issuing authority shall (i) use a 1:1 ratio of the nonpoint nutrient offsets to the site's remaining postdevelopment nonpoint nutrient runoff compliance requirement and (ii) assure that the nonpoint nutrient offsets are secured in perpetuity.

H. No permit issuing authority may grant an exception to, or waiver of, postdevelopment nonpoint nutrient runoff compliance requirements unless off-site options have been considered and found not available.

I. In considering off-site options, the permit issuing authority shall give priority to the use of nonpoint nutrient offsets unless a local fee-in-lieu-of, pro-rata share, or similar program has been approved by the Board as being substantially equivalent in nutrient reduction benefits. However, prior to approval by the Board, there shall be a rebuttable presumption that any local government fee-in-lieu- of, pro-rata share, or similar program is substantially equivalent in nutrient reduction benefits. The Board shall establish criteria for determining whether any such local program is substantially equivalent, which shall be used during the local stormwater management program approval process in § [10.1-603.3](#).

J. The Board may establish by regulation a stormwater nutrient program for portions of the Commonwealth that do not drain into the Chesapeake Bay.

That no Virginia Soil and Water Conservation Board regulatory action, nor any local government ordinance or regional (watershedwide) stormwater management plan amendment, is necessary prior to implementation of this act; however, the Virginia Soil and Water Conservation Board may conform its regulations to this act through an exempt action and may adopt regulations through a nonexempt action.

I. Permit application required for issuance of grading, building, or other permits. (§ 10.1-603.9.)

Upon the adoption of a local ordinance no grading, building or other permit shall be issued for a property unless a stormwater permit application has been approved that is consistent with the stormwater program and this article and unless the applicant has certified that all land clearing, construction, disturbance, land development and drainage will be done according to the approved permit conditions.

J. Monitoring, reports, investigations, and inspections. (§ 10.1-603.11.)

A. The permit issuing authority (i) shall provide for periodic inspections of the installation of stormwater management measures (ii) may require monitoring and reports from the person responsible for meeting the permit conditions to ensure compliance with the permit and to determine whether the measures required in the permit provide effective stormwater management, and (iii) conduct such investigations and perform such other actions as are necessary to carry out the provisions of this article. If the permit issuing authority determines that there is a failure to comply with the permit conditions, notice shall be served upon the permittee or person responsible for carrying out the permit conditions by registered or certified mail to the address specified in the permit application, or by delivery at the site of the development activities to the agent or employee supervising such activities. The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, the permit may be revoked by the permit issuing authority or the Board and the permittee or person responsible for carrying out the permit conditions shall be deemed to be in violation of this article and upon conviction shall be subject to the penalties provided by § [10.1-603.14](#).

B. Notwithstanding subsection A of this section, the following may be applied:

1. Where a county, city, or town administers the local control program and the permit issuing authority are not within the same local government department, the locality may designate one department to inspect, monitor, report, and ensure compliance.

2. Where a permit issuing authority has been established, and such authority is not vested in an employee or officer of local government but in the commissioner of revenue or some other person, the locality shall exercise the responsibilities of the permit issuing authority with respect to monitoring, reports, inspections, and enforcement unless such responsibilities are transferred as provided for in this section.

K. Right of entry. (§ [10.1-603.12:1.](#))

The Department, the permit issuing authority, or any duly authorized agent of the Department or permit issuing authority may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this article.

L. Information to be furnished. (§ [10.1-603.12:2.](#))

The Board, the Department, or the permit issuing authority may require every permit applicant or permittee to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this article. Any personal information shall not be disclosed except to an appropriate official of the Board, Department, US EPA, or permit issuing authority or as may be authorized pursuant to the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.). However, disclosure of records of the Department, the Board, or the permit issuing authority relating to (i) active federal environmental enforcement actions that are considered confidential under federal law, (ii) enforcement strategies, including proposed sanctions for enforcement actions, and (iii) any secret formulae, secret processes, or secret methods other than effluent data used by any permittee or under that permittee's direction is prohibited. Upon request, such enforcement records shall be disclosed after a proposed sanction resulting from the investigation has been determined by the Department, the Board, or the permit issuing authority. This section shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any land disturbing activity that may have occurred, or similar documents.

M. Private rights not affected. (§ [10.1-603.12:3.](#))

The fact that any permittee holds or has held a permit issued under this article shall not constitute a defense in any civil action involving private rights.

N. Enforcement by injunction, etc. (§ [10.1-603.12:4.](#))

It shall be unlawful for any person to fail to comply with any special order or emergency special order that has become final under the provisions of this article. Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, or any permit condition issued by the Board, Department, or permit issuing authority as authorized to do such, or any provisions of this article may be compelled in a proceeding instituted in any appropriate court by the Board, Department, or permit issuing authority to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.

O. Right to hearing. (§ [10.1-603.12:6.](#))

Any permit applicant or permittee under this article aggrieved by any action of the permit issuing authority or Board taken without a formal hearing, or by inaction of the permit issuing authority or Board, may demand in writing a formal hearing by the Board or

locality causing such permit applicant's or permittee's grievance, provided a petition requesting such hearing is filed with the Board or the locality within 30 days after notice of such action.

P. Hearings. (§ [10.1-603.12:7.](#))

A. The hearings held under this article pertaining to the responsibilities or actions of the Board may be conducted by the Board itself at a regular or special meeting of the Board, or by at least one member of the Board designated by the chairman to conduct such hearings on behalf of the Board at any other time and place authorized by the Board.

B. A verbatim record of the proceedings of such hearings shall be taken and filed with the Board. Depositions may be taken and read as in actions at law.

C. The Board shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the Board in the manner prescribed in § [2.2-4022](#). Witnesses who are subpoenaed shall receive the same fees and reimbursement for mileage as in civil actions.

D. Localities holding hearings under this article shall do so in a manner consistent with this section.

Q. Appeals. (§ [10.1-603.13.](#))

Any permittee or party aggrieved by a permit or enforcement decision of the permit issuing authority or Board, or any person who has participated, in person or by submittal of written comments, in the public comment process related to a final decision of the permit issuing authority or Board under this article, whether such decision is affirmative or negative, is entitled to judicial review thereof in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.) if such person meets the standard for obtaining judicial review of a case or controversy pursuant to Article III of the United States Constitution. A person shall be deemed to meet such standard if (i) such person has suffered an actual or imminent injury that is an invasion of a legally protected interest and that is concrete and particularized; (ii) such injury is fairly traceable to the decision of the permit issuing authority or the Board and not the result of the independent action of some third party not before the court; and (iii) such injury will likely be redressed by a favorable decision by the court.

The provisions of § [2.2-4030](#) shall not apply to decisions rendered by localities.

R. Penalties, injunctions, and other legal actions. (§ [10.1-603.14.](#))

A. Any person who violates any provision of this article, or of any regulations or ordinances adopted hereunder, including those adopted pursuant to the conditions of an MS4 permit or who fails, neglects or refuses to comply with any order of the permit issuing authority, the Department, Board, or court, issued as herein provided, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense. The Board shall adopt a regulation establishing a schedule of civil penalties to be utilized

by the permit issuing authority in enforcing the provisions of this article. The Board, Department, or permit issuing authority for the locality wherein the land lies may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate circuit court. Any civil penalties assessed by a court as a result of a summons issued by a locality shall be paid into the treasury of the locality wherein the land lies, except where the violator is the locality itself, or its agent. When the penalties are assessed by the court as a result of a summons issued by the Board or Department, or where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Stormwater Management Fund established pursuant to § [10.1-603.4:1](#). Such civil penalties paid into the treasury of the locality in which the violation occurred are to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.

B. Any person who willfully or negligently violates any provision of this article, any regulation or order of the Board, order of the permit issuing authority or the Department, ordinance of any locality, any condition of a permit, or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months and a fine of not less than \$2,500 nor more than \$32,500, either or both. Any person who knowingly violates any provision of this article, any regulation or order of the Board, order of the permit issuing authority or the Department, ordinance of any locality, any condition of a permit or any order of a court issued as herein provided, or who knowingly makes any false statement in any form required to be submitted under this article or knowingly renders inaccurate any monitoring device or method required to be maintained under this article, shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not less than \$5,000 nor more than \$50,000 for each violation. Any defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine of not less than \$10,000. Each day of violation of each requirement shall constitute a separate offense.

C. Any person who knowingly violates any provision of this article, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily harm, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than 15 years and a fine of not more than \$250,000, either or both. A defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not exceeding the greater of \$1 million or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person under this subsection.

D. Violation of any provision of this article may also include the following sanctions:

1. The Board, Department, or the permit issuing authority may apply to the circuit court in any jurisdiction wherein the land lies to enjoin a violation or a threatened violation of the provisions of this article or of the local ordinance without the necessity of showing that an adequate remedy at law does not exist.

2. With the consent of any person who has violated or failed, neglected or refused to obey any ordinance, any condition of a permit, any regulation or order of the Board, any order of the permit issuing authority or the Department, or any provision of this article, the Board, Department, or permit issuing authority may provide, in an order issued against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in this section. Such civil charges shall be instead of any appropriate civil penalty that could be imposed under this section. Any civil charges collected shall be paid to the locality or state treasury pursuant to subsection A.

S. Enforcement authority of MS4 localities.(§ [10.1-603.14:1.](#))

A. Any locality may adopt a stormwater ordinance pursuant to the conditions of a MS4 permit and may utilize the civil penalty provisions in subsection A of § [10.1-603.14](#), the injunctive authority as provided for in subdivision D 1 of § [10.1-603.14](#), and the civil charges as authorized in subdivision D 2 of § [10.1-603.14](#), to enforce the ordinance. At the request of another MS4, the locality may apply the penalties provided for in this section to direct or indirect discharges to any MS4 located within its jurisdiction.

B. Any person who willfully and knowingly violates any provision of such an ordinance is guilty of a Class 1 misdemeanor.

C. The local ordinance authorized by this section shall remain in full force and effect until the locality has been delegated the authority to administer a local stormwater management program, whereupon the locality shall adopt an ordinance that is consistent with Article 1.1 (§ [10.1-603.1](#) et seq.) of Chapter 6 of this title.

T. Cooperation with federal and state agencies. (§ [10.1-603.15.](#))

Localities operating their own programs and the Department are authorized to cooperate and enter into agreements with any federal or state agency in connection with permits for land disturbing activities for stormwater management.

U. Stream restoration and relocation. (§[10.1-603.4.](#))

Stream restoration and relocation projects that incorporate natural channel design concepts are not man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels.

V. Flow rate capacity and velocity requirements for natural or manmade channels. (§[10.1-603.4.](#))

Any land-disturbing activity that provides for stormwater management intended to address any flow rate capacity and velocity requirements for natural or manmade channels shall satisfy the flow rate capacity and velocity requirements for natural or manmade channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the

expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5, 2, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels.

W. Low impact development. (§10.1-603.4.)

Encourage low impact development designs, regional and watershed approaches, and nonstructural means for controlling stormwater.

X. Reclamation and reuse of stormwater. (§10.1-603.4)

Promote the reclamation and reuse of stormwater for uses other than potable water in order to protect state waters and the public health and to minimize the direct discharge of pollutants into state waters.

Section 10-4. STORMWATER MANAGEMENT PROGRAM TECHNICAL CRITERIA

- A.** For those localities required to adopt a local stormwater management program pursuant to §10.1-603.3 of the Code of Virginia, until a local program is approved by the board, the technical criteria required shall be that found at 4VAC50-60-1180 through 4VAC50-60-1190.

B. General Requirements. (4VAC50-60-53.)

The physical, chemical, biological and hydrologic characteristics and the water quality and quantity of the receiving state waters shall be maintained, protected, or improved in accordance with the requirements of this part. Objectives include, but are not limited to, supporting state designated uses and water quality standards. All control measures used shall be employed in a manner which minimizes impacts on receiving state waters.

C. Applicability of other laws and regulations. (4VAC50-60-56.)

Nothing in this chapter shall be construed as limiting the applicability of other laws and regulations, including, but not limited to, the CWA, Virginia Stormwater Management Act, Virginia Erosion and Sediment Control Law, and the Chesapeake Bay Preservation Act except as provided in §10.1-603.3 subsection I and all applicable regulations adopted in accordance with those laws, or the rights of other federal agencies, state agencies, or local governments to impose more stringent technical criteria or other requirements as allowed by law.

D. Water quality criteria requirements. (4VAC50-60-63.)

A. In order to protect the quality of state waters and to control nonpoint source pollution, the following minimum technical criteria and statewide standards for stormwater management shall be applied to the site of a land-disturbing activity. The local program shall have discretion to allow for application of the criteria to each drainage area of the

site. However, where a site drains to more than one HUC, the pollutant load reduction requirements shall be applied independently within each HUC, unless reductions are achieved in accordance with a comprehensive watershed stormwater management plan in accordance with 4VAC50-60-96.

1. New development. The total phosphorus load of new development projects shall not exceed 0.28 pounds per acre per year, as calculated pursuant to 4VAC50-60-65.
2. Development on prior developed lands. The total phosphorus load of projects occurring on prior developed lands shall be reduced to an amount at least 20% below the pre-development total phosphorus load. However, the total phosphorus load shall not be required to be reduced to below 0.28 pounds per acre per year unless a more stringent standard has been established by a qualifying local program.
3. Compliance with 4VAC50-60-65 shall constitute compliance with subdivisions A 1 and A 2.
4. TMDL. In addition to the above requirements, if a specific WLA for a pollutant has been established in a TMDL and is assigned to stormwater discharges from a construction activity, necessary control measures must be implemented by the operator to meet the WLA in accordance with the requirements established in the General Permit for Discharges of Stormwater from Construction Activities or an individual permit, which address both construction and post-construction discharges.

E. Water quality compliance. (4VAC50-60-65.)

A. Compliance with the water quality criteria set out in subdivisions A 1 and 2 of 4VAC50-60-63 shall be determined by utilizing the Virginia Runoff Reduction Method or another methodology that is demonstrated by the qualifying local program to achieve equivalent or more stringent results and is approved by the board.

B. The BMPs listed in Table 1 or the BMPs available on the Virginia Stormwater BMP Clearinghouse website shall be utilized as necessary to effectively reduce the phosphorus load in accordance with the Virginia Runoff Reduction Method. Design specifications for the BMPs listed in Table 1 can be found at <http://www.vwrrc.vt.edu/swc>.

TABLE 1. BMP Pollutant Removal Efficiencies

Practice	Removal of Total Phosphorus by Runoff Volume Reduction (RR, as %) (based upon 1 inch of rainfall --90% storm)	Removal of Total Phosphorus by Treatment -- Pollutant Concentration Reduction (PR, as %)	Total Removal of Total Phosphorus (TR, as %)
Green Roof 1	45	0	45
Green Roof 2	60	0	60
Rooftop Disconnection 1	25	0	25
Rooftop Disconnection 2	50	0	50
Rain Tanks/Cisterns 1	actual volume x .75	0	actual volume x .75
Soil Amendments 1	50	0	50
Soil Amendments 2	75	0	75
Permeable Pavement 1	45	25	59
Permeable Pavement 2	75	25	81
Grass Channel 1	10	15	23
Grass Channel 2	20	15	32
Bioretention 1	40	25	55
Bioretention 2	80	50	90
Infiltration 1	50	25	63
Infiltration 2	90	25	93
Dry Swale 1	40	20	52
Dry Swale 2	60	40	76
Wet Swale 1	0	20	20
Wet Swale 2	0	40	40
Sheet Flow to Conserved Open Space 1	0	50	50
Sheet Flow to Conserved Open Space 2	0	75	75
Extended Detention Pond 1	0	15	15
Extended Detention Pond 2	15	15	28
Filtering Practice 1	0	60	60
Filtering Practice 2	0	65	65
Constructed Wetland 1	0	50	50
Constructed Wetland 2	0	75	75
Wet Pond 1	0	50	50
Wet Pond 2	0	75	75

C. BMPs differing from those listed in Table 1 shall be reviewed and approved by the director in accordance with procedures established by the BMP Clearinghouse Committee and approved by the board.

D. A qualifying local program may establish use limitations on specific BMPs following the submission of the proposed use limitation and written justification to the department.

E. Where the land-disturbing activity only occurs on a portion of the site, the local program may review the stormwater management plan based upon the portion of the site that is proposed to be developed, provided that the local program has established guidance for such a review. Such portion shall be deemed to include any area left undeveloped pursuant to any local requirement or proffer accepted by a locality. Any such guidance shall be provided to the department.

F. If a comprehensive watershed stormwater management plan has been adopted pursuant to 4VAC50-60-96 for the watershed within which a project is located, then the qualifying local program may allow off-site controls in accordance with the plan to achieve the post-development pollutant load water quality technical criteria set out in subdivisions A 1 and A 2 of 4VAC50-60-63. Such off-site controls shall achieve the required pollutant reductions either completely off-site in accordance with the plan or in a combination of on-site and off-site controls.

G. Where no plan exists pursuant to subsection F, off-site controls may be used to meet the post-development pollutant load water quality technical criteria set out in subdivisions A 1 and A 2 of 4VAC50-60-63 provided:

1. The local program allows for off-site controls;
2. The applicant demonstrates to the satisfaction of the local program that off-site reductions equal to or greater than those that would otherwise be required for the site are achieved;
3. The applicant demonstrates to the satisfaction of the local program that the development's runoff and the runoff from any off-site treatment area shall be controlled in accordance with 4VAC50-60-66;
4. Off-site controls must be located within the same HUC or the adjacent downstream HUC to the land-disturbing site; and
5. The applicant demonstrates to the satisfaction of the local program that the right to utilize the off-site control area and any necessary easements have been obtained and maintenance agreements for the stormwater management facilities have been established pursuant to 4VAC50-60-124.

H. Alternatively, the local program may waive the requirements of subdivisions A 1 and A 2 of 4VAC50-60-63 through the granting of an exception pursuant to 4VAC50-60-122.

F. Water quantity. (4VAC50-60-66.)

Channel protection and flood protection shall be addressed in accordance with the minimum standards set out in this section, which are established pursuant to the requirements of §10.1-603.4(7).

A. Channel protection. Concentrated stormwater flow from the site and off-site contributing areas shall be released into a stormwater conveyance system and shall meet one of the following criteria as demonstrated by use of accepted hydrologic and hydraulic methodologies:

1. Concentrated stormwater flow to manmade stormwater conveyance systems. The point of discharge releases stormwater into a manmade stormwater conveyance system that, following the land-disturbing activity, conveys the post-development peak flow rate from the 2-year 24-hour storm without causing erosion of the system.
2. Concentrated stormwater flow to restored stormwater conveyance systems. The point of discharge releases stormwater into a stormwater conveyance system that (i) has been restored and is functioning as designed or (ii) will be restored. The applicant must demonstrate that the runoff following the land-disturbing activity, in combination with other existing stormwater runoff, will not exceed the design of the restored stormwater conveyance system nor result in instability of the system.
3. Concentrated stormwater flow to stable natural stormwater conveyance systems. The point of discharge releases stormwater into a natural stormwater conveyance system that is stable and, following the land-disturbing activity, (i) will not become unstable as a result of the discharge from the one-year 24-hour storm, and (ii) provides a peak flow rate from the one-year 24-hour storm calculated as follows or in accordance with another methodology that is demonstrated by the local program to achieve equivalent results and is approved by the board:

$$Q_{\text{Developed}} * RV_{\text{Developed}} \leq Q_{\text{Pre-Developed}} * RV_{\text{Pre-Developed}}, \text{ where}$$

$Q_{\text{Developed}}$ = The allowable peak flow rate of runoff from the developed site.

$Q_{\text{Pre-Developed}}$ = The peak flow rate of runoff from the site in the pre-developed condition.

$RV_{\text{Pre-Developed}}$ = The volume of runoff from the site in the pre-developed condition.

$RV_{\text{Developed}}$ = The volume of runoff from the developed site.

4. Concentrated stormwater flow to unstable natural stormwater conveyance systems. Where the point of discharge releases stormwater into a natural stormwater conveyance system that is unstable, stormwater runoff following a land-disturbing activity shall be released into a channel at or below a peak flow rate ($Q_{\text{Developed}}$) based on the one year 24-hour storm, calculated as follows or in accordance with another methodology that is demonstrated by the local program to achieve equivalent or more stringent results and is approved by the board:

$$Q_{\text{Developed}} * RV_{\text{Developed}} \leq Q_{\text{Forested}} * RV_{\text{Forested}}, \text{ where}$$

$Q_{\text{Developed}}$ = The allowable peak flow rate from the developed site.

Q_{Forested} = The peak flow rate from the site in a forested condition.

RV_{Forested} = The volume of runoff from the site in a forested condition.

$RV_{\text{Developed}}$ = The volume of runoff from the developed site.

B. Flood protection. Concentrated stormwater flow shall be released into a stormwater conveyance system and shall meet one of the following criteria, as demonstrated by use of accepted hydrologic and hydraulic methodologies:

1. Concentrated stormwater flow to manmade stormwater conveyance systems. The point of discharge releases stormwater into a manmade stormwater conveyance system that, following the land-disturbing activity, confines the post-development peak flow rate from the 10-year 24-hour storm within the manmade stormwater conveyance system.

2. Concentrated stormwater flow to restored stormwater conveyance systems. The point of discharge releases stormwater into a stormwater conveyance system that (i) has been restored and is functioning as designed or (ii) will be restored. The applicant must demonstrate that the peak flow rate from the 10-year 24-hour storm following the land-disturbing activity will be confined within the system.

3. Concentrated stormwater flow to natural stormwater conveyance systems. The point of discharge releases stormwater into a natural stormwater conveyance system that currently does not flood during the 10-year 24-hour storm and, following the land-disturbing activity, confines the post-development peak flow rate from the 10-year 24-hour storm within the system.

4. Concentrated stormwater flow to natural stormwater conveyance systems where localized flooding exists during the 10-year 24-hour storm. The point of discharge releases a post-development peak flow rate for the 10-year 24-hour storm that shall not exceed the pre-development peak flow rate from the 10-year 24-hour storm based on forested conditions.

5. A local program may adopt alternate flood protection design criteria that (i) achieve equivalent or more stringent results, (ii) are based upon geographic, land use, topographic, geologic or other downstream conveyance factors, and (iii) are approved by the board.

C. One percent rule. If either of the following criteria are met, subsections A and B do not apply:

1. Based on area. Prior to any land disturbance, the site's contributing drainage area to a point of discharge from the site is less than or equal to 1.0% of the total watershed area draining to that point of discharge; or

2. Based on peak flow rate. Based on the post-development land cover conditions prior to the implementation of any stormwater quantity control measures, the development of the site results in an increase in the peak flow rate from the one-year 24-hour storm that is less than 1.0% of the existing peak flow rate from the one-year 24-hour storm generated by the total watershed area draining to that point of discharge.

D. Increased volumes of sheet flow resulting from pervious or disconnected impervious areas, or from physical spreading of concentrated flow through level spreaders, must be identified and evaluated for potential impacts on down gradient properties or resources. Increased volumes of sheet flow that will cause or contribute to erosion, sedimentation, or flooding of down gradient properties or resources shall be diverted to a detention facility or a stormwater conveyance system that conveys the runoff without causing down gradient erosion, sedimentation, or flooding. If all runoff from the site is sheet flow and the conditions of this subsection are met, no further water quantity controls are required.

E. For purposes of computing predevelopment runoff from prior developed sites, all pervious lands on the site shall be assumed to be in good hydrologic condition in accordance with NRCS standards, regardless of conditions existing at the time of computation. Predevelopment runoff calculations utilizing other hydrologic conditions may be utilized provided that it is demonstrated to and approved by the local program that actual site conditions warrant such considerations.

F. Pre-development runoff characteristics and site hydrology shall be verified by site inspections, topographic surveys, available soil mapping or studies, and calculations

consistent with good engineering practices in accordance with guidance provided in the Virginia Stormwater Management Handbook and by the qualifying local program.

G. Except where the compliance options under subdivisions A 4 and B 4 of this section are utilized, flooding and channel erosion impacts to stormwater conveyance systems shall be analyzed for each point of discharge in accordance with channel analysis guidance provided in Technical Bulletin # 1, Stream Channel Erosion Control, or in accordance with more stringent channel analysis guidance established by the qualifying local program and provided to the department. Such analysis shall include estimates of runoff from the developed site and the entire upstream watershed which contributes to that point of discharge. Good engineering practices and calculations in accordance with department guidance shall be used to evaluate post development runoff characteristics and site hydrology, and flooding and channel erosion impacts.

If the downstream owner or owners refuse to give permission to access the property for the collection of data, evidence of this refusal shall be given and arrangements made satisfactory to the local program to provide an alternative method for the collection of data to complete the analysis, such as through the use of photos, aerial surveys, "as built" plans, topographic maps, soils maps, and any other relevant information.

F. Design storms and hydrologic methods. (4VAC50-60-73.)

A. Unless otherwise specified, the prescribed design storms are the 1-year, 2-year, and 10-year 24-hour storms using the site-specific rainfall precipitation frequency data recommended by the U.S. National Oceanic and Atmospheric Administration (NOAA) Atlas 14. Partial duration time series shall be used for the precipitation data.

B. All hydrologic analyses shall be based on the existing watershed characteristics and the ultimate development condition of the subject project.

C. The U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) synthetic 24-hour rainfall distribution and models, including, but not limited to TR-55 and TR-20; hydrologic and hydraulic methods developed by the U.S. Army Corps of Engineers; or other standard hydrologic and hydraulic methods, shall be used to conduct the analyses described in this part.

D. The local program may allow for the use of the Rational Method for evaluating peak discharges or the Modified Rational Method for evaluating volumetric flows to stormwater conveyances with drainage areas of 200 acres or less.

G. Stormwater harvesting. (4VAC50-60-74.)

In accordance with §10.1-603.4 of the Code of Virginia, stormwater harvesting is encouraged for the purposes of landscape irrigation systems, fire protection systems, flushing water closets and urinals, and other water handling systems to the extent such systems are consistent with federal, state and local regulatory authorities.

H. Linear development projects. (4VAC50-60-76.)

Unless exempt pursuant to §10.1-603.8 subsection B, linear development projects shall control post-development stormwater runoff in accordance with a site-specific stormwater management plan or a comprehensive watershed stormwater management plan developed in accordance with these regulations.

I. Stormwater management impoundment structures or facilities. (4VAC50-60-85.)

A. Construction of stormwater management impoundment structures or facilities within tidal or nontidal wetlands and perennial streams is not recommended.

B. Construction of stormwater management impoundment structures or facilities within a Federal Emergency Management Agency (FEMA) designated 100-year floodplain is not recommended.

C. Stormwater management wet ponds and extended detention ponds that are not covered by the Impounding Structure Regulations (4VAC50-20) shall be engineered for structural integrity and spillway design for the 100-year storm event.

D. Construction of stormwater management impoundment structures or facilities may occur in karst areas only after a geological study of the area has been conducted to determine the presence or absence of karst features that may be impacted by stormwater runoff and BMP placement.

E. Discharge of stormwater runoff to a karst feature shall meet the water quality criteria set out in 4VAC50-60-63 and the water quantity criteria set out in 4VAC50-60-66. Permanent stormwater management impoundment structures or facilities shall only be constructed in karst features after completion of a geotechnical investigation that identifies any necessary modifications to the BMP to ensure its structural integrity and maintain its water quality and quantity efficiencies. The person responsible for the land disturbing activity is encouraged to screen for known existence of heritage resources in the karst features. Any Class V Underground Injection Control Well registration statements for stormwater discharges to improved sinkholes shall be included in the SWPPP.

J. Stormwater management plan development. (4VAC50-60-93.)

A. A stormwater management plan for a land disturbing activity shall apply these stormwater management technical criteria to the entire land-disturbing activity.

B. Individual lots or planned phases of developments shall not be considered separate land-disturbing activities, but rather the entire development shall be considered a single land-disturbing activity.

C. The stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.

Section 10-5. LOCAL PROGRAM REQUIREMENTS**A. Authority and applicability. (4VAC50-60-102.)**

If a locality has adopted a local stormwater management program in accordance with the Virginia Stormwater Management Act, §10.1-603.2 et seq. and the board has deemed such program adoption consistent with the Virginia Stormwater Management Act and these regulations in accordance with §10.1-603.3 subsection F, the board may authorize a locality to administer a qualifying local program. Pursuant to §10.1-603.4, the board is required to establish standards and procedures for such an authorization.

This part specifies the minimum technical criteria and the local government ordinance requirements for a local program to be considered a qualifying local program. Such criteria include but are not limited to administration, plan review, issuance of coverage under the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities, inspection, and enforcement.

B. Technical criteria for qualifying local programs. (4VAC50-60-104.)

A. All qualifying local programs shall require compliance with the provisions of Part II (4VAC50-60-40 et seq.) of these regulations unless an exception is granted pursuant to 4VAC50-60-122 and shall comply with the requirements of 4VAC50-60-460 subsection L.

B. When a locality operating a qualifying local program has adopted requirements more stringent than those imposed by this chapter in accordance with §10.1-603.7 or implemented a comprehensive stormwater management plan, the department shall consider such requirements in its review of state projects within that locality in accordance with Part IV (4VAC50-60-160 et seq.) of these regulations.

C. Nothing in this part shall be construed as authorizing a locality to regulate, or to require prior approval by the locality for, a state project.

C. Qualifying local program administrative requirements. (4VAC50-60-106.)

A. A qualifying local program shall provide for the following:

1. Identification of the authority authorizing coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities, the plan reviewing authority, the plan approving authority, the inspection authority, and the enforcement authority;
2. Technical criteria to be used in the qualifying local program;
3. Procedures for the submission and approval of plans;
4. Inspection and monitoring of land-disturbing activities covered by a permit for compliance;
5. Procedures or policies for long-term inspection and maintenance of stormwater management facilities; and
6. Enforcement.

B. A locality shall adopt an ordinance(s) that incorporates the components set out in subsection A and consent to follow procedures provided by the department for the issuance, denial, revocation, termination, reissuance, transfer, or modifications of coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.

C. A qualifying local program shall report to the department information related to the administration and implementation of the qualifying local program in accordance with 4VAC50-60-126.

D. A qualifying local program may require the submission of a reasonable performance bond or other financial surety and provide for the release of such sureties in accordance with the criteria set forth in §10.1-603.8.

D. Qualifying local program stormwater management plan review. (4VAC50-60-108.)

A. A qualifying local program shall require stormwater management plans to be submitted for review and be approved prior to commencement of land-disturbing activities.

B. A qualifying local program shall approve or disapprove a stormwater management plan and required accompanying information according to the following:

1. Stormwater management plan review shall begin upon submission of a complete plan. A complete plan shall include the following elements:

- a. The location of all points of stormwater discharge, receiving surface waters or karst features into which the stormwater discharges, and pre-development and post-development conditions for drainage areas, including final drainage patterns and changes to existing contours;
- b. Contact Information including the name, address, and telephone number of the property owner and the tax reference number and parcel number of the property or properties affected;
- c. A narrative that includes a description of current site conditions and proposed development and final site conditions, including proposed stormwater management facilities and the mechanism, including an identification of financially responsible parties, through which the facilities will be operated and maintained during and after construction activity;
- d. The location and the design of the proposed stormwater management facilities;
- e. Information identifying the hydrologic characteristics and structural properties of soils utilized with the installation of stormwater management facilities;
- f. Hydrologic and hydraulic computations of the pre-development and post-development runoff conditions for the required design storms;
- g. Good engineering practices and calculations verifying compliance with the water quality and quantity requirements of this chapter;
- h. A map(s) of the site which depicts the topography of the site and includes:
 - (1) All contributing drainage areas;
 - (2) Receiving surface waters or karst features into which stormwater will be discharged;
 - (3) Existing streams, ponds, culverts, ditches, wetlands, and other water bodies;
 - (4) Soil types, geologic formations, forest cover, and other vegetative areas;
 - (5) Current land use including existing structures, roads, and locations of known utilities and easements;
 - (6) Sufficient information on adjoining parcels to assess the impacts of stormwater from the site;
 - (7) The limits of clearing and grading, and the proposed drainage patterns on the site;
 - (8) Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and
 - (9) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.
- i. 50% of the required fee in accordance with 4VAC50-60-820 and the required fee form must have been submitted.

2. Elements of the stormwater management plans shall be appropriately sealed and signed by a professional in adherence to all minimum standards and requirements pertaining to the practice of that profession in accordance with Chapter 4 of Title 54.1 of the Code of Virginia and attendant regulations.

3. Completeness of a plan and required accompanying information shall be determined by the qualifying local program, and the applicant shall be notified of any determination, within 15 calendar days of receipt.

a. If within those 15 days the plan is deemed to be incomplete based on the criteria set out in subsection B of this section, the applicant shall be notified in writing of the reasons the plan is deemed incomplete.

b. If a determination of completeness is made and communicated to the applicant within the 15 calendar days, an additional 60 calendar days from the date of the communication will be allowed for the review of the plan.

c. If a determination of completeness is not made and communicated to the applicant within the 15 calendar days, the plan shall be deemed complete as of the date of submission and a total of 60 calendar days from the date of submission will be allowed for the review of the plan.

d. The qualifying local program shall act within 45 days on any plan that has been previously disapproved and resubmitted.

4. During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the land-disturbing activity or their designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this chapter and of the qualifying local program.

5. If a plan meeting all requirements of this chapter and of the qualifying local program is submitted and no action is taken within the time specified above, the plan shall be deemed approved.

C. Notwithstanding the requirements of subsection A, if allowed by the qualifying local program, an initial stormwater management plan may be submitted for review and approval when it is accompanied by an erosion and sediment control plan, preliminary stormwater design for the current and future site work, fee form, and 50% of the fee required by 4VAC50-60-820. Such plans shall be limited to the initial clearing and grading of the site unless otherwise allowed by the qualifying local program. Approval by the qualifying local program of an initial plan does not supersede the need for the submittal and approval of a complete stormwater management plan and the updating of the SWPPP prior to the commencement of activities beyond initial clearing and grading and other activities approved by the local program. The initial plan shall include information detailed in subsection B to the extent required by the qualifying local program and such other information as may be required by the qualifying local program.

D. Each approved plan may be modified in accordance with the following:

1. Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the qualifying local program. The qualifying local program shall have 60 calendar days to respond in writing either approving or disapproving such requests.

2. Based on an inspection, the qualifying local program may require amendments to the approved stormwater management plan to address the noted deficiencies and notify the permittee of the required modifications.

E. Qualifying local program authorization of coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities. (4VAC50-60-112.)

A. Coverage shall be authorized by the qualifying local program under the VSMP General Permit for Discharges of Stormwater from Construction Activities in accordance with the following:

1. The applicant must have an approved initial stormwater management plan or an approved stormwater management plan for the land-disturbing activity.
2. The applicant must have submitted proposed right-of-entry agreements or easements from the owner for purposes of inspection and maintenance and proposed maintenance agreements, including inspection schedules, in accordance with 4VAC50-60-124.
3. The applicant must have an approved registration statement for the VSMP General Permit for Discharges of Stormwater from Construction Activities.
4. The applicant must have submitted the required fee form and total fee required by 4VAC50-60-820.
5. Applicants submitting registration statements deemed to be incomplete must be notified within 15 working days of receipt by the qualifying local program that the registration statement is not complete and be notified (i) of what material needs to be submitted to complete the registration statement, and (ii) that the land-disturbing activity does not have coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.

B. Coverage or termination of coverage shall be authorized through a standardized database or other method provided by the department. Such database shall include, at a minimum, permit number, operator name, activity name, acres disturbed, date of permit coverage, and site address and location as well as date of termination.

C. Coverage information pertaining to the VSMP General Permit for Discharges of Stormwater from Construction Activities shall be reported to the department in accordance with 4VAC50-60-126 by the qualifying local program.

D. The applicant shall be notified of authorization of permit coverage by the qualifying local program.

F. Inspections. (4VAC50-60-114.)

A. The qualifying local program or its designee shall inspect the land-disturbing activity during construction for compliance with the VSMP General Permit for Discharges of Stormwater from Construction Activities.

B. The person responsible for the development project or their designated agent shall submit to a qualifying local program a construction record drawing for permanent stormwater management facilities, appropriately sealed and signed by a professional in accordance with all minimum standards and requirements pertaining to the practice of that profession pursuant to Chapter 4 of Title 54.1 of the Code of Virginia and attendant regulations, certifying that the stormwater management facilities have been constructed in accordance with the approved plan. The qualifying local program shall have the construction record drawing and certification on file prior to the release of the portion of the performance bond or surety associated with the stormwater management facility.

C. The owner(s) of stormwater management facilities shall be required to conduct inspections in accordance with an inspection schedule in a recorded maintenance agreement, and shall submit written inspection and maintenance reports to the qualifying local program upon request. Such reports, if consistent with a board approved inspection program established in subsection D, may be utilized by the qualifying local program if the inspection is conducted by a person who is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (§54.1-400 et seq.) of Chapter 4 of Title 54.1 or who holds a certificate of competence from the board. The reports, if so utilized, must be kept on file with the qualifying local program

D. A qualifying local program shall establish an inspection program that ensures that the stormwater management facilities are being maintained as designed. Any inspection program shall be:

1. Approved by the board prior to implementation;
2. Established in writing;
3. Based on a system of priorities that takes into consideration the purpose and type of the facility, ownership and the existence of a recorded maintenance agreement and inspection schedule, the contributing drainage area, and downstream conditions;
4. Demonstrated to be an enforceable inspection program that meets the intent of the regulations and ensures that each stormwater management facility is inspected by the qualifying local program or its designee, not to include the owner except as provided in subsection C, at least every five years; and
5. Documented by inspection records.

E. Inspection reports shall be generated and kept on file in accordance with 4VAC50-60-126 for all stormwater management facilities inspected by the qualifying local program.

G. Qualifying local program enforcement. (4VAC50-60-116.)

A. A qualifying local program may incorporate the following components:

1. Informal and formal administrative enforcement procedures including:
 - a. Verbal warnings and inspection reports;
 - b. Notices of corrective action;
 - c. Consent special orders and civil charges in accordance with §§10.1-603.2:1 subsection 7 and 10.1-603.14 subsection D2;
 - d. Notices to comply in accordance with §10.1-603.11;
 - e. Special orders in accordance with §10.1-603.2:1 subsection 7;
 - f. Emergency special orders in accordance with §10.1-603.2:1 subsection 7; and
 - g. Public notice and comment periods pursuant to 4VAC50-60-660.
2. Civil and criminal judicial enforcement procedures including:
 - a. Schedule of civil penalties set out in subsection D;
 - b. Criminal penalties in accordance with §10.1-603.14 subsections B and C; and
 - c. Injunctions in accordance with §§10.1-603.12:4, 10.1-603.2:1 and 10.1-603.14 subsection D1.

B. A qualifying local program shall develop policies and procedures that outline the steps to be taken regarding enforcement actions under the Stormwater Management Act and attendant regulations and the local ordinance.

C. A qualifying local program may utilize the department's Stormwater Management Enforcement Manual as guidance in establishing policies and procedures.

D. A court may utilize as guidance the following Schedule of Civil Penalties set by the board in accordance with §10.1-603.14 subsection A. The range contained within the schedule reflects the degree of harm caused by the violation, which is site-specific and may vary greatly from case to case, as may the economic benefit of noncompliance to the violator. Each day of violation of each requirement shall constitute a separate offense. Assignment of the degree of harm is a qualitative decision subject to the court's discretion. The court has the discretion to impose a maximum penalty of \$32,500 per violation per day in accordance with §10.1-603.14 subsection A.

1. Gravity-based Component	Marginal	Moderate	Serious	
Violations* and Frequency of Occurrence **	\$\$ x occurrences	\$\$ x occurrences	\$\$ x occurrences	SUBTOTAL
No Permit Registration (each month w/o coverage = 1 occurrence)	500 x ____	1,000 x ____	2,000 x ____	
No SWPPP (No SWPPP components including E&S Plan) (each month of land-disturbing without SWPPP = 1 occurrence)	1,000 x ____	1,500 x ____	2,000 x ____	
Incomplete SWPPP	300 x ____	500 x ____	1,000 x ____	
SWPPP not on site	100 x ____	300 x ____	500 x ____	
No approved Erosion and Sediment Control Plan	500 x ____	1,000 x ____	2,000 x ____	
Failure to install stormwater BMPs or erosion and sediment ("E&S") controls	300 x ____	500 x ____	1,000 x ____	

Stormwater BMPs or E&S controls improperly installed or maintained	250 x _____	500 x _____	750 x _____	
Operational deficiencies (e.g., failure to initiate stabilization measures as soon as practicable; unauthorized discharges of stormwater; failure to implement control measures for construction debris)	1,000 x _____	2,000 x _____	5,000 x _____	
Failure to conduct required inspections	500 x _____	2,000 x _____	3,000 x _____	
Incomplete, improper or missed inspections (e.g., inspections not conducted by qualified personnel; site inspection reports do not include date, weather information, location of discharge, or are not certified, etc.)	300 x _____	500 x _____	1,000 x _____	
			Subtotal #1	
2. Estimated Economic Benefit of Noncompliance (if applicable)			Subtotal #2	
3. Recommended civil penalty			Total (#1 and #2)	
<p>* Each stormwater BMP or E&S control that is either not installed or improperly installed or maintained is a separate violation.</p> <p>** The frequency of occurrence is per event unless otherwise noted.</p>				

E. Pursuant to §10.1-603.2:1 subsection 2, authorization to administer a qualifying local program shall not remove from the board the authority to enforce the provisions of the Virginia Stormwater Management Act and attendant regulations.

F. Pursuant to §10.1-603.14 subsection A, amounts recovered by a qualifying local program shall be paid into the treasury of the locality in which the violation occurred and are to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.

H. Hearings. (4VAC50-60-118.)

A qualifying local program shall ensure that any permit applicant or permittee shall have a right to a hearing pursuant to §10.1-603.12:6 and shall ensure that all hearings held under this chapter shall be conducted in accordance with §10.1-603.12:7 or as otherwise provided by law.

I. Qualifying local program exceptions. (4VAC50-60-122.)

A. A qualifying local program may grant exceptions to the provisions of Part II (4VAC50-60-40 et seq.) through an administrative process. A request for an exception, including the reasons for making the request, shall be submitted, in writing, to the qualifying local program. An exception may be granted, provided that: (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the intent of the Act and this chapter are preserved, (iii) granting the exception will not confer on the permittee any special privileges that are denied to other permittees who present similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created.

B. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this chapter.

C. Under no circumstance shall the qualifying local program grant an exception to the requirement that the land-disturbing activity obtain a permit.

D. A record of all exceptions granted shall be maintained by the qualifying local program and reported to the department in accordance with 4VAC50-60-126.

J. Qualifying local program stormwater management facility maintenance. (4VAC50-60-124.)

A. Responsibility for the operation and maintenance of stormwater management facilities in accordance with this chapter, unless assumed by a governmental agency, shall remain with the property owner or other legally established entity and shall pass to any successor. The government entity implementing the qualifying local program shall be a party to each maintenance agreement. Such maintenance agreement shall include a schedule for inspections by the owner, and, in addition to ensuring that each facility is maintained as designed, shall ensure that the designed flow and drainage patterns from the site to a permanent facility are maintained. Such agreements may also contain provisions specifying that, where maintenance or repair of a stormwater management facility located on the owner's property is neglected, or the stormwater management facility becomes a public health or safety concern and the owner has failed to perform the necessary maintenance and repairs after receiving notice from the locality, the qualifying local program may perform the necessary maintenance and repairs and recover the costs from the owner. In the specific case of a public health or safety danger, the agreement may provide that the written notice may be waived by the locality.

B. The qualifying local program shall be notified of any transfer or conveyance of ownership or responsibility for maintenance of a stormwater management facility.

C. The qualifying local program shall require right-of-entry agreements or easements from the property owner for purposes of inspection and maintenance.

K. Qualifying local program report and recordkeeping. (4VAC50-60-126.)

A. On a fiscal year basis (July 1 to June 30), a qualifying local program shall report to the department by October 1st of each year in a format provided by the department. The information to be provided shall include the following:

1. Information on each permanent stormwater management facility completed during the fiscal year to include type of stormwater management facility, coordinates, acres treated, and the surface waters or karst features into which the stormwater management facility will discharge;
2. Number of VSMP General Permit for Discharges of Stormwater from Construction Activities projects inspected and the total number of inspections by acreage categories determined by the department during the fiscal year;
3. Number and type of enforcement actions during the fiscal year; and
4. Number of exceptions applied for and the number granted or denied during the fiscal year.

B. A qualifying local program shall make information set out in subsection A available to the department upon request.

C. A qualifying local program shall keep records in accordance with the following:

1. Permit files shall be kept for 3 years after permit termination. After 3 years, the permit file shall be delivered to the department by October 1st of each year.
2. Stormwater maintenance facility inspection reports shall be kept for 5 years from the date of inspection.
3. Stormwater maintenance agreements, design standards and specifications, post-construction surveys, and maintenance records shall be maintained in perpetuity.

L. DOCUMENTS INCORPORATED BY REFERENCE

Illicit Discharge Detection and Elimination – A Guidance Manual for Program Development and Technical Assessments, EPA Cooperative Agreement X-82907801-0, October 2004, by Center for Watershed Protection and Robert Pitt, University of Alabama, available on the Internet at http://www.cwp.org/idde_verify.htm.

Getting in Step – A Guide for Conducting Watershed Outreach Campaigns, EPA-841-B-03-002, December 2003, U.S. Environmental Protection Agency, Office of Wetlands, Oceans, and Watersheds, available on the Internet at <http://www.epa.gov/owow/watershed/outreach/documents/getnstep.pdf>, or may be ordered from National Service Center for Environmental Publications, telephone 1-800-490-9198.

Municipal Stormwater Program Evaluation Guidance, EPA-833-R-07-003, January 2007 (field test version), U.S. Environmental Protection Agency, Office of Wastewater Management, available on the Internet at http://cfpub.epa.gov/npdes/docs.cfm?program_id=6&view=allprog&sort=name#ms4_guidance,

or may be ordered from National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, telephone 1-800-553-6847 or (703) 605-6000.

Technical Bulletin #1 - Stream Channel Erosion Control, Virginia Department of Conservation and Recreation, 2000.

Technical Memorandum – The Runoff Reduction Method, April 2008, and beta-version addendum, September 2008.

Virginia Runoff Reduction Method Worksheet, September 2008.

Section 10-6. FEES.

A. Purpose. (4VAC50-60-700.)

Sections 10.1-603.4 and 10.1-603.5 of the Code of Virginia authorize the establishment of a statewide fee schedule for stormwater management for land disturbing activities and for municipal separate storm sewer systems. This part establishes the fee assessment and the collection and distribution systems for those fees. The fees associated with individual permits or coverage under the General Permit for Discharges of Stormwater From Construction Activities (permits for stormwater management for land disturbing activities) issued by a qualifying local program or a department administered local stormwater management program, that has been approved by the board, shall include costs associated with plan review, permit review and issuance, inspections, enforcement, program administration and oversight, and database management. Fees shall also be established for permit maintenance, modification, and transfer.

Should a qualifying local program demonstrate to the board its ability to fully and successfully implement a qualifying local program without a full implementation of the fees set out in this Part, the board may authorize the administrative establishment of a lower fee for that program provided that such reduction shall not reduce the amount of fees due to the department for its program oversight and shall not affect the fee schedules set forth herein.

As part of its program oversight, the department shall periodically assess the revenue generated by both the localities and the department to ensure that the fees have been appropriately set and the fees may be adjusted through periodic regulatory actions should significant deviations become apparent. The department may make such periodic adjustments in addition to the annual fee increases authorized by 4VAC50-60-840.

B. Authority. (4VAC50-60-720.)

The authority for this part is §§10.1-603.4 and 10.1-603.4:1 of the Code of Virginia and enactment clause 7 governing the transfer of the relevant provisions of Fees for Permits and Certificates Regulations, 9VAC25-20, in accordance with Chapter 372 of the 2004 Virginia Acts of Assembly.

C. Applicability. (4VAC50-60-730.)

A. This part applies to:

1. All persons seeking coverage of a MS4 under a new permit. The fee due shall be as specified under 4VAC50-60-800.

2. All operators who request that an existing MS4 individual permit be modified, except as specifically exempt under 4VAC50-60-740 A-4 of this chapter. The fee due shall be as specified under 4VAC50-60-810.

3. All persons seeking coverage under the General Permit for Discharges of Stormwater From Construction Activities or a person seeking an Individual Permit for Discharges of Stormwater From Construction Activities. The fee due shall be as specified under 4VAC50-60-820.

4. All permittees who request modifications to or transfers of their existing registration statement for coverage under a General Permit for Discharges of Stormwater From Construction Activities or of an Individual Permit for Discharges of Stormwater From Construction Activities. The fee due shall be as specified under 4VAC50-60-825 in addition to any additional fees necessary pursuant to 4VAC50-60-820 due to an increase in acreage.

B. Persons who are applicants for an individual VSMP Municipal Separate Stormwater Sewer System permit as a result of existing permit revocation shall be considered an applicant for a new permit. The fee due shall be as specified under 4VAC50-60-800.

Persons whose coverage under the General Permit for Discharges of Stormwater From Construction Activities has been revoked shall reapply for an Individual Permit for Discharges of Stormwater From Construction Activities. The fee due shall be as specified under 4VAC50-60-820.

C. Permit and permit coverage maintenance fees may apply to each Virginia Stormwater Management Permit (VSMP) permit holder. The fee due shall be as specified under 4VAC50-60-830.

D. Exemptions. (4VAC50-60-740.)

A. No permit application fees will be assessed to:

1. Permittees who request minor modifications to permits as defined in 4VAC50-60-10 or other minor amendments at the discretion of the local stormwater management program.

2. Permittees whose permits are modified or amended at the initiative of the permit-issuing authority. This does not include errors in the registration statement identified by the local stormwater management program or errors related to the acreage of the site.

B. Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional review by the local stormwater management program shall not be exempt pursuant to this section and shall be subject to fees specified under 4VAC50-60-825.

E. Due dates for Virginia Stormwater Management Program (VSMP) Permits. (4VAC50-60-750.)

A. Requests for a permit, permit modification, or general permit coverage shall not be processed until the fees required pursuant to this part are paid in accordance with 4VAC50-60-760.

B. Individual permit or general permit coverage maintenance fees shall be paid annually to the department or the qualifying local program, as applicable, by the anniversary date of individual permit issuance or general permit coverage. No permit will be reissued or automatically continued without payment of the required fee. Individual permit or general permit coverage maintenance fees shall be applied until a Notice of Termination is effective.

MS4 individual operators who currently pay a permit maintenance fee that is due by October 1 of each year shall continue to pay the maintenance fee by October 1 until their current permit expires. Upon reissuance of the MS4 individual permit, maintenance fees shall be paid on the anniversary date of the reissued permit.

F. Method of payment. (4VAC50-60-760.)

A. Fees, as applicable, shall be, at the discretion of the department, submitted electronically or be paid by check, draft or postal money order payable to:

1. The Treasurer of Virginia, for a MS4 individual or general permit or for a coverage issued by the department under the General Permit for Discharges of Stormwater From Construction Activities or Individual Permit for Discharges of Stormwater From Construction Activities, and must be in U.S. currency, except that agencies and institutions of the Commonwealth of Virginia may submit Interagency Transfers for the amount of the fee. The Department of Conservation and Recreation may provide a means to pay fees electronically. Fees not submitted electronically shall be sent to the following address:

Virginia Department of Conservation and Recreation
Division of Finance, Accounts Payable
203 Governor Street
Richmond, VA 23219

2. The qualifying local program, for coverage authorized by the qualifying local program under the General Permit for Discharges of Stormwater From Construction Activities, and must be in U.S. Currency.

B. Required information for permits or permit coverage: All applicants, unless otherwise specified by the department, shall submit the following information along with the fee payment or utilize the Department of Conservation and Recreation Permit Application Fee Form:

1. Applicant name, address and daytime phone number.
2. Applicant Federal Identification Number (FIN), if applicable.
3. The name of the facility/activity, and the facility/activity location.
4. The type of permit applied for.
5. Whether the application is for a new permit issuance, permit reissuance, permit maintenance, or permit modification.
6. The amount of fee submitted.
7. The existing permit number, if applicable.
8. Other information as required by the local stormwater management program.

G. Incomplete payments and late payments. (4VAC50-60-770.)

All incomplete payments will be deemed as nonpayments. The department or the qualifying local program, as applicable, shall provide notification to the applicant of any incomplete payments.

Interest may be charged for late payments at the underpayment rate set out by the U.S. Internal Revenue Service established pursuant to §6621(a)(2) of the Internal Revenue Code. This rate is set forth in §58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate.

A 10% late payment fee shall be charged to any delinquent (over 90 days past due) account.

The department and the qualifying local program are entitled to all remedies available under the Code of Virginia in collecting any past due amount.

H. Deposit and use of fees. (4VAC50-60-780.)

A. All fees collected by the department or board pursuant to this chapter shall be deposited into ~~as~~ the Virginia Stormwater Management Fund and shall be used and accounted for as specified in §10.1-603.4:1 of the Code of Virginia. Fees collected by the department or board shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

B. All fees collected by a qualifying local program pursuant to this chapter shall be subject to accounting review and shall be used solely to carry out the qualifying local program's responsibilities pursuant to Part II and Part IIIA of these regulations.

Pursuant to §10.1-603.4 subdivision 5 a of the Code of Virginia, whenever the board has authorized the administration of a stormwater management program by a qualifying local program, 28% of the total revenue generated by the statewide stormwater management fees collected within the locality in accordance with 4VAC50-60-820 shall be remitted on a monthly basis to the State Treasurer for deposit in the Virginia Stormwater Management Fund unless otherwise collected electronically. If the qualifying local program waives or reduces any fee due in accordance with 4VAC50-60-820, the qualifying local program shall remit the 28% portion that would be due to the Virginia Stormwater Management Fund if such fee were charged in full.

I. General. (4VAC50-60-790.)

The fees for individual permits, general permit coverage, permit or registration statement modification, or permit transfers are considered separate actions and shall be assessed a separate fee, as applicable.

J. Fee schedules for VSMP Municipal Separate Storm Sewer System new permit issuance. (4VAC50-60-800.)

The following fee schedule applies to permit applications for issuance of a new individual VSMP Municipal Separate Storm Sewer System permit or coverage under a MS4 General Permit. All regulated MS4s that apply for joint coverage under an individual permit or general permit registration shall each pay the appropriate fees set out below.

VSMP Municipal Stormwater / MS4 Individual (Large and Medium)	\$16,000
VSMP Municipal Stormwater / MS4 Individual (Small)	\$8,000
VSMP Municipal Stormwater / MS4 General Permit (Small)	\$4,000

K. Fee schedules for major modification of MS4 individual permits requested by the operator. (4VAC50-60-810.)

The following fee schedule applies to applications for major modification of an individual MS4 permit requested by the permittee:

VSMP Municipal Stormwater / MS4 Individual (Large and Medium)	\$5,000
VSMP Municipal Stormwater / MS4 Individual (Small)	\$2,500

L. Fees for an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities. (4VAC50-60-820.)

The following fees apply to coverage under the General Permit for Discharges of Stormwater from Construction Activities issued by the department prior to a qualifying local program or a department administered local stormwater management program being approved by the board in the area where the applicable land disturbing activity is located, or where the department has issued an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities for a state agency for which it has approved annual standards and specifications.

VSMP General / Stormwater Management - Phase I Land Clearing ("Large" Construction Activity - Sites or common plans of development equal to or greater than 5 acres)	\$500
VSMP General / Stormwater Management - Phase II Land Clearing ("Small" Construction Activity - Sites or common plans of development equal to or greater than 1 acre and less than 5 Acres)	\$300
VSMP General/Stormwater Management – Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land disturbance acreage equal to or greater than 2,500 square feet and less than 1 acre)	\$200

The following fees apply to coverage under the General Permit for Discharges of Stormwater from Construction Activities for a state agency which does not file annual standards and specifications, an individual permit issued by the board or coverage under the General Permit for Discharges of Stormwater from Construction Activities issued by a qualifying local program or a department administered local stormwater management program that has been approved by the board. For coverage under the General Permit for Discharges of Stormwater from Construction Activities, 50% of the fee shall be due at the time that a stormwater management plan or an initial stormwater management plan is submitted for review in accordance with 4VAC50-60-108. The remaining 50% shall be due prior to the issuance of coverage under the General Permit for Discharges of Stormwater from Construction Activities.

When a site or sites are purchased for development within a previously permitted common plan of development or sale, the applicant shall be subject to fees in accordance with the disturbed acreage of their site or sites according to the following table.

VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites within designated areas of	\$290
--	-------

Chesapeake Bay Act localities with land disturbance acreage equal to or greater than 2,500 square feet and less than 0.5 acre)	
VSMP General / Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre)	\$290
VSMP General / Stormwater Management - Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land disturbance acreage equal to or greater than 0.5 acre and less than 1 acre)	\$1,500
VSMP General / Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 1 acre and less than 5 Acres)	\$2,700
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)	\$3,400
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing [Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres]	\$4,500
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$6,100
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres)	\$9,600
VSMP Individual Permit for Discharges of Stormwater From Construction Activities	\$15,000

M. Fees for the modification or transfer of individual permits or of registration statements for the General Permit for Discharges of Stormwater from Construction Activities. (4VAC50-60-825.)

The following fees apply to modification or transfer of individual permits or of registration statements for the General Permit for Discharges of Stormwater from Construction Activities issued by a qualifying local program or a department administered local stormwater management program, that has been approved by the board. If the permit modifications result in changes to stormwater management plans that require additional review by the local stormwater management program, such reviews shall be subject to the fees set out in this section. The fee assessed shall be based on the total disturbed acreage of the site. No modification or transfer fee shall be required until such board approved programs exist. No modification fee shall be required for the General Permit for Discharges of Stormwater from Construction Activities for a

state agency which is administering a project in accordance with approved annual standards and specifications but shall apply to all other state agency projects.

VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land disturbance acreage equal to or greater than 2,500 square feet and less than 0.5 acre)	\$20
VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre)	\$20
VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land disturbance acreage equal to or greater than 0.5 acre and less than 1.0 acre)	\$100
VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 1 and less than 5 acres)	\$200
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)	\$250
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$300
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$450
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres)	\$700
VSMP Individual Permit for Discharges of Stormwater From Construction Activities	\$5,000

N. Permit maintenance fees. (4VAC50-60-830.)

The following annual permit maintenance fees apply to each VSMP permit identified below, including expired permits that have been administratively continued. With respect to the General Permit for Discharges of Stormwater from Construction Activities, these fees shall apply until the permit coverage is terminated, and shall only be effective when assessed by a qualifying local program or a department administered local stormwater management program that has been approved by the board. No maintenance fee shall be required for a General Permit for Discharges of Stormwater from Construction Activities until such board approved programs exist. No maintenance fee shall be required for the General Permit for Discharges of Stormwater from Construction Activities for a state agency which is administering a project in

accordance with approved annual standards and specifications but shall apply to all other state agency projects. All regulated MS4s who are issued joint coverage under an individual permit or general permit

registration shall each pay the appropriate fees set out below:

	VSMP Municipal Stormwater / MS4 Individual (Large and Medium)	\$8,800
	VSMP Municipal Stormwater / MS4 Individual (Small)	\$6,000
	VSMP Municipal Stormwater/MS4 General Permit (Small)	\$4,000
	VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land disturbance acreage equal to or greater than 2,500 square feet and less than 0.5 acre)	\$50
	VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre)	\$50
	VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land disturbance acreage equal to or greater than 0.5 acre and less than 1 acre)	\$200
	VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance equal to or greater than 1 acre and less than 5 acres)	\$400
	VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)	\$500
	VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$650
	VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$900
	VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater 100 acres)	\$1,400

	VSMP Individual Permit for Discharges From Construction Activities	\$3,000
--	--	---------

O. Annual increase in fees. (4VAC50-60-840.)

The fees set out in sections 4VAC50-60-800 through 4VAC50-60-830 shall be increased each July 1st by multiplying the fee by the percentage by which the consumer price index for all-urban consumers published by the United States Department of Labor (CPI-U) for the 12-month period ending May 31 of the preceding year exceeds the CPI-U for the 12-month period ending May 31, 2007, and the result shall be rounded to the nearest \$1 increment. The fee schedule shall be posted to the department's website and distributed to each qualified local program in advance of each fiscal year. Notwithstanding the foregoing, in no event shall the permit fee be decreased and in no event shall any increase exceed 4% per annum, without formal action by the board.

P. Forms

Application Form 1-General Information, Consolidated Permits Program, EPA Form 3510-1 (August 1990) (DCR 199-149).

Department of Conservation and Recreation Permit Application Fee Form, (DCR 199-145) (09/08).

VSMP General Permit Registration Statement for Construction Activity Stormwater Discharges, (DCR01), (DCR 199-146) (09/04).

VSMP General Permit Notice of Termination for Construction Activity Stormwater Discharges, (DCR01), (DCR 199-147) (09/04).

VSMP General Permit Registration Statement for Stormwater Discharges From Small Municipal Separate Storm Sewer Systems (VAR04), (DCR 199-148) (07/08)